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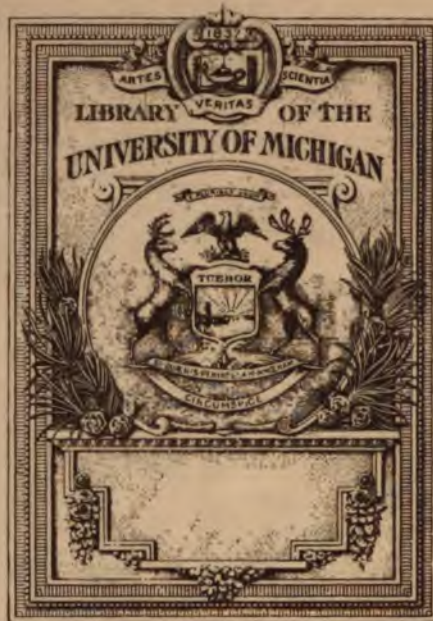
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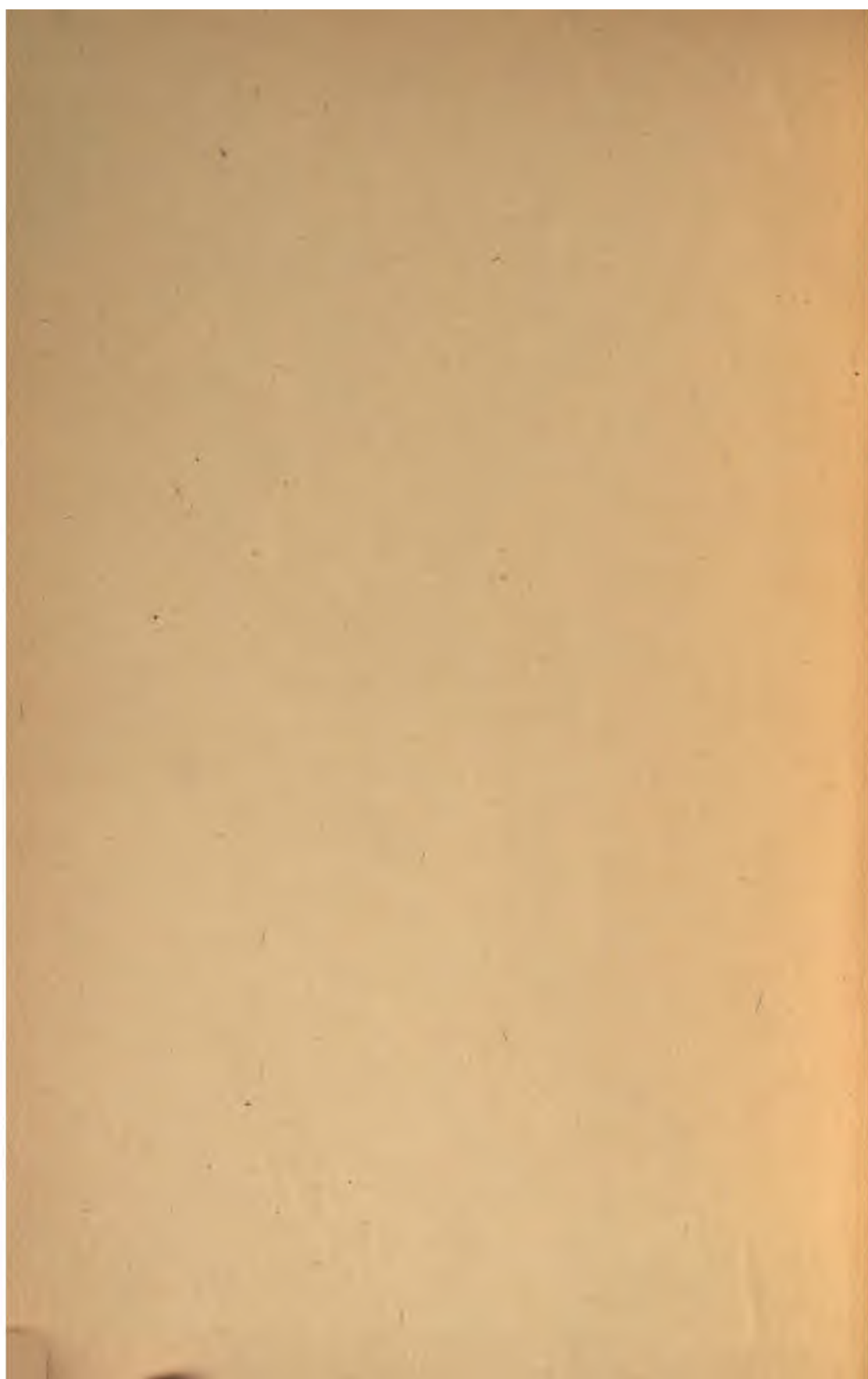
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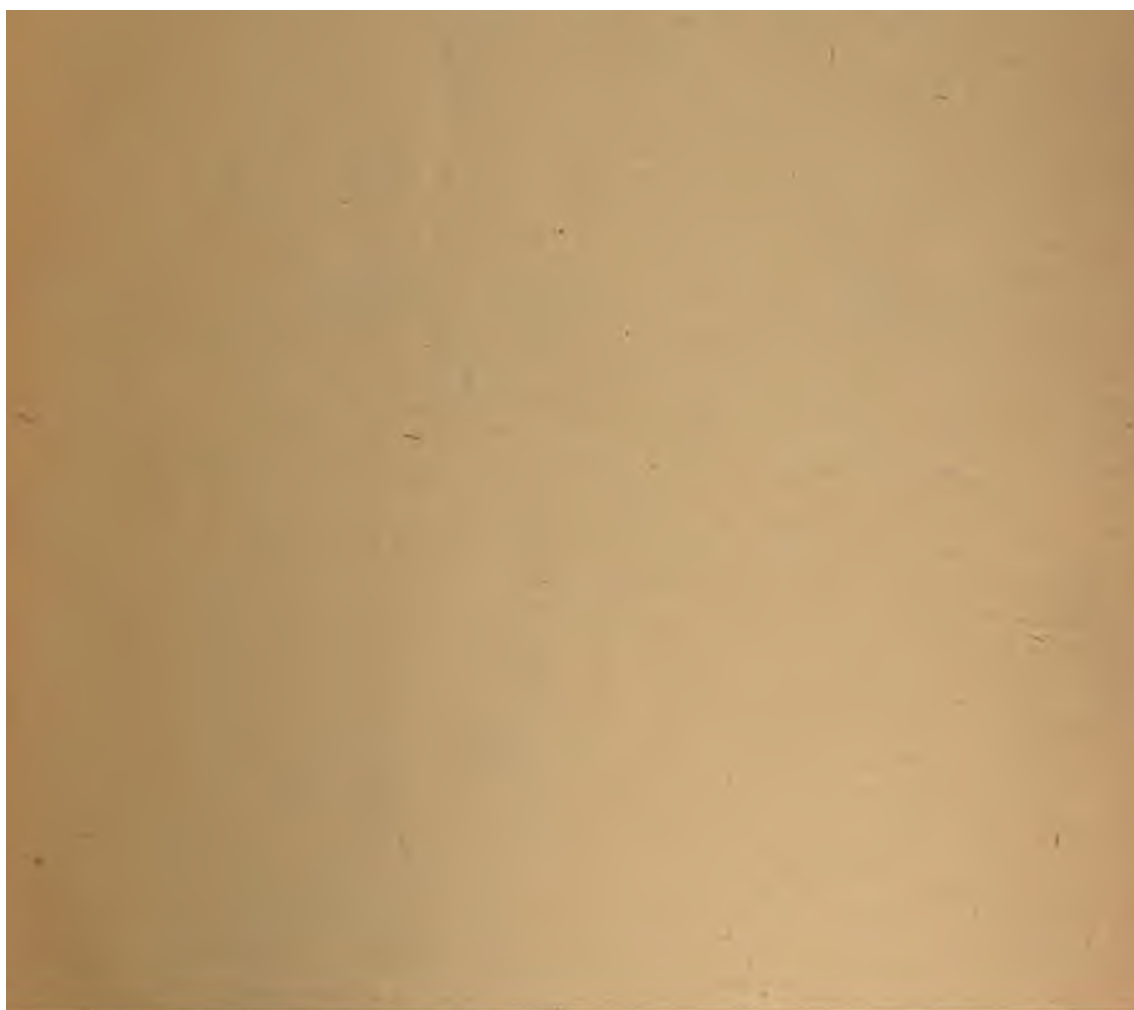
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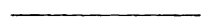
Carnegie Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

Pamphlet No. 23



OFFICIAL COMMUNICATIONS AND SPEECHES RELATING TO PEACE PROPOSALS 1916-1917



**PUBLISHED BY THE ENDOWMENT
WASHINGTON, D. C.
1917**

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PREFATORY NOTE

On December 12, 1916, the Imperial German Chancellor, von Bethmann-Hollweg, delivered an address in the Reichstag in which he stated the willingness of the German Empire, under certain conditions, to consider the question of peace with its enemies. In the same speech the Chancellor read to the Reichstag the text of a note which the Imperial Government had submitted, through certain neutral Governments, for consideration by the Entente Powers. An identical note was likewise submitted on the same date, through the same channels, by Germany's allies. The Entente Powers, by way of reply to these overtures, stated in similar official form the conditions upon which they would consider the question of peace with their enemies. Certain neutral Powers took advantage of these expressions of the respective belligerents to set forth their views as to the international situation.

It has been thought advisable at this time to collect the various official statements, and to issue them for convenience in a pamphlet, arranged in chronological order but without expression of individual opinion or commentary. The documents themselves have been taken from official sources whenever available.

JAMES BROWN SCOTT,

Director of the Division of International Law.

WASHINGTON, D. C.,

February 19, 1917.

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OFFICIAL COMMUNICATIONS AND SPEECHES RELATING TO PEACE PROPOSALS, 1916-1917

Extract from the Speech of Chancellor von Bethmann-Hollweg in the German Reichstag, December 12, 1916¹

The Reichstag had been adjourned for a long period, but fortunately it was left to the discretion of the President as to the day of the next meeting. This discretion was caused by the hope that soon happy events in the field would be recorded, a hope fulfilled quicker, almost, than expected. I shall be brief, for actions speak for themselves.

[Here the Chancellor referred to the entrance of Roumania into the war, and its intended effect on the western front.]

The situation was serious. But with God's help our troops shaped conditions so as to give us security which not only is complete but still more so than ever before. The western front stands. Not only does it stand, but in spite of the Roumanian campaign it is fitted out with larger reserves of men and material than it had been formerly. The most effective precautions have been taken against all Italian diversions. And while on the Somme and on the Carso the drum-fire resounded, while the Russians launched troops against the eastern frontier of Transylvania, Field Marshal von Hindenburg captured the whole of western Wallachia and the hostile capital of Bucharest, leading with unparalleled genius the troops that in competition with all the allies made possible what hitherto was considered impossible.

And Hindenburg does not rest. Military operations progress. By strokes of the sword at the same time firm foundations for our economic needs have been laid. Great stocks of grain, victuals, oil, and other goods fell into our hands in Roumania. Their transport has begun. In spite of scarcity, we could have lived on our own supplies, but now our safety is beyond question.

To these great events on land, heroic deeds of equal importance are added by our submarines. The spectre of famine, which our enemies intended to appear before us, now pursues them without mercy. When, after the termination of the first year of the war, the Emperor addressed the nation in a public appeal, he said: "Having witnessed such great events, my heart was filled with awe and determination." Neither our Emperor nor our nation ever changed their minds in this respect.

¹*The New York Times*, December 13, 1916.

Neither have they now. The genius and heroic acts of our leaders have fashioned these facts as firm as iron. If the enemy counted upon the weariness of his enemy, then he was deceived.

The Reichstag, by means of the national auxiliary war service law, helped to build a new offensive and defensive bulwark in the midst of the great struggle. Behind the fighting army stands the nation at work—the gigantic force of the nation, working for the common aim.

The empire is not a besieged fortress, as our adversaries imagined, but one gigantic and firmly disciplined camp with inexhaustible resources. That is the German Empire, which is firmly and faithfully united with its brothers in arms, who have been tested in battle under the Austro-Hungarian, Turkish, and Bulgarian flags.

Our enemies now ascribed to us a plan to conquer the whole world, and then desperate cries of anguish for peace. But not confused by these asseverations, we progressed with firm decision, and we thus continue our progress, always ready to defend ourselves and fight for our nation's existence, for its free future, and always ready for this price to stretch out our hand for peace.

Our strength has not made our ears deaf to our responsibility before God, before our own nation, and before humanity. The declarations formerly made by us concerning our readiness for peace were evaded by our adversaries. Now we have advanced one step further in this direction. On August 1, 1914, the Emperor had personally to take the gravest decision which ever fell to the lot of a German—the order for mobilization—which he was compelled to give as a result of the Russian mobilization. During these long and earnest years of the war the Emperor has been moved by a single thought: how peace could be restored to safeguard Germany after the struggle in which she has fought victoriously.

Nobody can testify better to this than I who bear the responsibility for all actions of the Government. In a deep moral and religious sense of duty toward his nation and, beyond it, toward humanity, the Emperor now considers that the moment has come for official action toward peace. His Majesty, therefore, in complete harmony and in common with our allies, decided to propose to the hostile powers to enter peace negotiations. This morning I transmitted a note to this effect to all the hostile powers through the representatives of those powers which are watching over our interests and rights in the hostile States. I asked the representatives of Spain, the United States, and Switzerland to forward that note.

The same procedure has been adopted to-day in Vienna, Constanti-

nople, and Sofia. Other neutral States and his Holiness the Pope have been similarly informed.

[The Chancellor then read the note.¹]

Gentlemen, in August, 1914, our enemies challenged the superiority of power in the world war. To-day we raise the question of peace, which is a question of humanity. We await the answer of our enemies with that serenity of mind which is guaranteed to us by our exterior and interior strength, and by our clear conscience. If our enemies decline to end the war, if they wish to take upon themselves the world's heavy burden of all these terrors which hereafter will follow, then even in the least and smallest homes every German heart will burn in sacred wrath against our enemies, who are unwilling to stop human slaughter in order that their plans of conquest and annihilation may continue.

In the fateful hour we took a fateful decision. It has been saturated with the blood of hundreds of thousands of our sons and brothers who gave their lives for the safety of their home. Human wits and human understanding are unable to reach to the extreme and last questions in this struggle of nations, which has unveiled all the terrors of earthly life, but also the grandeur of human courage and human will in ways never seen before. God will be the judge. We can proceed upon our way.

Peace Note of Germany and Her Allies, December 12, 1916²

The most terrific war experienced in history has been raging for the last two years and a half over a large part of the world—a catastrophe which thousands of years of common civilization was unable to prevent and which injures the most precious achievements of humanity.

Our aims are not to shatter nor annihilate our adversaries. In spite of our consciousness of our military and economic strength and our readiness to continue the war (which has been forced upon us) to the bitter end, if necessary; at the same time, prompted by the desire to avoid further bloodshed and make an end to the atrocities of war, the four allied powers propose to enter forthwith into peace negotiations.

The propositions which they bring forward for such negotiations, and which have for their object a guarantee of the existence, of the honor and liberty of evolution for their nations, are, according to their

¹See *infra*.

²*The New York Times*, December 13, 1916.

firm belief, an appropriate basis for the establishment of a lasting peace.

The four allied powers have been obliged to take up arms to defend justice and the liberty of national evolution. The glorious deeds of our armies have in no way altered their purpose. We always maintained the firm belief that our own rights and justified claims in no way control the rights of these nations.

The spiritual and material progress which were the pride of Europe at the beginning of the twentieth century are threatened with ruin. Germany and her allies, Austria-Hungary, Bulgaria, and Turkey, gave proof of their unconquerable strength in this struggle. They gained gigantic advantages over adversaries superior in number and war material. Our lines stand unshaken against ever-repeated attempts made by armies.

The last attack in the Balkans has been rapidly and victoriously overcome. The most recent events have demonstrated that further continuance of the war will not result in breaking the resistance of our forces, and the whole situation with regard to our troops justifies our expectation of further successes.

If, in spite of this offer of peace and reconciliation, the struggle should go on, the four allied powers are resolved to continue to a victorious end, but they solemnly disclaim responsibility for this before humanity and history. The Imperial Government, through the good offices of your Excellency, asks the Government of [here is inserted the name of the neutral power addressed in each instance] to bring this communication to the knowledge of the Government of [here are inserted the names of the belligerents].

Note of the German Government to the Vatican regarding the Peace Proposals, December 12, 1916¹

According to instructions received, I have the honor to send to your Eminence a copy of the declaration of the Imperial Government to-day, which, by the good offices of the powers intrusted with the protection of German interests in the countries with which the German Empire is in a state of war, transmits to these States, and in which the Imperial Government declares itself ready to enter into peace negotiations. The Austro-Hungarian, Turkish, and Bulgarian Governments also have sent similar notes.

¹*The New York Times*, December 13, 1916.

The reasons which prompted Germany and her allies to take this step are manifest. For two years and a half a terrible war has been devastating the European Continent. Unlimited treasures of civilization have been destroyed. Extensive areas have been soaked with blood. Millions of brave soldiers have fallen in battle and millions have returned home as invalids. Grief and sorrow fill almost every house.

Not only upon the belligerent nations, but also upon neutrals, the destructive consequences of the gigantic struggle weigh heavily. Trade and commerce, carefully built up in years of peace, have been depressed. The best forces of the nation have been withdrawn from the production of useful objects. Europe, which formerly was devoted to the propagation of religion and civilization, which was trying to find solutions for social problems, and was the home of science and art and all peaceful labor, now resembles an immense war camp, in which the achievements and works of many decades are doomed to annihilation.

Germany is carrying on a war of defence against her enemies, which aim at her destruction. She fights to assure the integrity of her frontiers and the liberty of the German Nation, for the right which she claims to develop freely her intellectual and economic energies in peaceful competition and on an equal footing with other nations. All the efforts of their enemies are unable to shatter the heroic armies of the (Teutonic) allies, which protect the frontiers of their countries, strengthened by the certainty that the enemy shall never pierce the iron wall.

Those fighting on the front know that they are supported by the whole nation, which is inspired by love for its country and is ready for the greatest sacrifices and determined to defend to the last extremity the inherited treasure of intellectual and economic work and the social organization and sacred soil of the country.

Certain of our own strength, but realizing Europe's sad future if the war continues; seized with pity in the face of the unspeakable misery of humanity, the German Empire, in accord with her allies, solemnly repeats what the Chancellor already has declared, a year ago, that Germany is ready to give peace to the world by setting before the whole world the question whether or not it is possible to find a basis for an understanding.

Since the first day of the Pontifical reign his Holiness the Pope has unswervingly demonstrated, in the most generous fashion, his solicitude

for the innumerable victims of this war. He has alleviated the sufferings and ameliorated the fate of thousands of men injured by this catastrophe. Inspired by the exalted ideas of his ministry, his Holiness has seized every opportunity in the interests of humanity to end so sanguinary a war.

The Imperial Government is firmly confident that the initiative of the four powers will find friendly welcome on the part of his Holiness, and that the work of peace can count upon the precious support of the Holy See.

**Austrian Official Statement regarding the Peace Proposals,
December 12, 1916¹**

When in the summer of 1914 the patience of Austria-Hungary was exhausted by a series of systematically-continued and ever-increasing provocations and menaces, and the monarchy, after almost fifty years of unbroken peace, found itself compelled to draw the sword, this weighty decision was animated neither by aggressive purposes nor by designs of conquest, but solely by the bitter necessity of self-defense, to defend its existence and safeguard itself for the future against similar treacherous plots of hostile neighbors.

That was the task and aim of the monarchy in the present war. In combination with its allies, well tried in loyal comradeship in arms, the Austro-Hungarian army and fleet, fighting, bleeding, but also assailing and conquering, gained such successes that they frustrated the intentions of the enemy. The Quadruple Alliance not only has won an immense series of victories, but also holds in its power extensive hostile territories. Unbroken is its strength, as our latest treacherous enemy has just experienced.

Can our enemies hope to conquer or shatter this alliance of powers? They will never succeed in breaking it by blockade and starvation measures. Their war aims, to the attainment of which they have come no nearer in the third year of the war, will in the future be proved to have been completely unattainable. Useless and unavailing, therefore, is the prosecution of the fighting on the part of the enemy.

The powers of the Quadruple Alliance, on the other hand, have effectively pursued their aims, namely, defence against attacks on their existence and integrity, which were planned in concert long since, and

¹*The New York Times*, December 13, 1916.

the achievement of real guarantees, and they will never allow themselves to be deprived of the basis of their existence, which they have secured by advantages won.

The continuation of the murderous war, in which the enemy can destroy much, but can not—as the Quadruple Alliance is firmly confident—alter fate, is ever more seen to be an aimless destruction of human lives and property, an act of inhumanity justified by no necessity and a crime against civilization.

This conviction, and the hope that similar views may also be begun to be entertained in the enemy camp, has caused the idea to ripen in the Vienna Cabinet—in full agreement with the Governments of the allied (Teutonic) powers—of making a candid and loyal endeavor to come to a discussion with their enemies for the purpose of paving a way for peace.

The Governments of Austria-Hungary, Germany, Turkey, and Bulgaria have addressed to-day identical notes to the diplomatic representatives in the capitals concerned who are intrusted with the promotion of enemy nationals, expressing an inclination to enter into peace negotiations and requesting them to transmit this overture to enemy States. This step was simultaneously brought to the knowledge of the representatives of the Holy See in a special note, and the active interest of the Pope for this offer of peace was solicited. Likewise the accredited representatives of the remaining neutral States in the four capitals were acquainted with this proceeding for the purpose of informing their Governments.

Austria and her allies by this step have given new and decisive proof of their love of peace. It is now for their enemies to make known their views before the world.

Whatever the result of its proposal may be, no responsibility can fall on the Quadruple Alliance, even before the judgment seat of its own peoples, if it is eventually obliged to continue the war.

Extracts from the Speech of Premier Briand in the French Chamber of Deputies, December 13, 1916¹

[TRANSLATION]

It is after proclaiming her victory on every front that Germany,

¹France: *Journal Officiel* du 14 décembre 1916, *Chambre—Séance* du 13 décembre, p. 3638.

feeling that she can not win, throws out to us certain phrases about which I can not refrain from making a few remarks.

You have read the speech of Mr. von Bethmann-Hollweg, the Chancellor of the German Empire. On this speech, of which I have not yet received the official text, I can not express myself officially. These so-called proposals have not yet been presented to any of the Governments, and it is rather doubtful whether, under existing conditions, those who have been asked to act as intermediaries will accept so delicate a task, which may disturb many a conscience.

On this as on all matters I cannot express an official opinion until we and our Allies have thoroughly considered and discussed the question, and reached a full and complete agreement. But I have the right, indeed the duty, to warn you against this possible poisoning of our country.

When I see Germany arming herself to the teeth, mobilizing her entire civil population at the risk of destroying her commerce and her industries, of breaking up her homes of which she is so proud; when I see the fires of all her factories burning red in the manufacture of war material; when I see her, in contravention of the law of nations, conscripting men in their own countries and forcing them to work for her, if I did not warn my country, I should be culpable indeed!

Observe, gentlemen, that what they are sending us from over there is an invitation to discuss peace. It is extended to us under conditions that are well known to you: Belgium invaded, Serbia invaded, Roumania invaded, ten of our Departments invaded! This invitation is in vague and obscure terms, in high-sounding words to mislead the minds, to stir the conscience, and to trouble the hearts of peoples who mourn for their countless dead. Gentlemen, this is a crucial moment. I discern in these declarations the same cry of conscience, ever striving to deceive neutrals and perhaps also to blind the eyes of those among the German people whose vision is still unimpaired. "It was not we," say these declarations, "who let loose this horrible war."

There is one cry constantly on German lips: "We were attacked; we are defending ourselves; we are the victims!" To this cry I make answer for the hundredth time: "No; you are the aggressors; no matter what you may say, the facts are there to prove it. The blood is on your heads, not on ours."

Furthermore, the circumstances in which these proposals are made are such that I have the right to denounce them as a crafty move, a clumsy snare. When, after reading words like the following, "We wish to give to our peoples every liberty they need, every opportunity

to live and to prosper that they may desire," I note in the same document that what our enemies so generously offer to other nations is a sort of charitable promise not to crush them, not to annihilate them, I exclaim: "Is that what they dare to offer, after the Marne, after the Yser, after Verdun, to France who stands before them glorious in her strength?"

We must think over a document like that; we must consider what it represents at the moment it is thrown at the world and what its aim is.

The things I am telling you are merely my personal impressions. I would not be talking thus, were it not my duty to put my country on her guard against what might bring about her demoralization. It is not that I doubt her clear-sightedness or her perspicacity. I am quite sure that she will not allow herself to be duped. But, nevertheless, even before the proposals are officially laid before us, I have the right to say to you that they are merely a ruse, an attempt to weaken the bonds of our alliance, to trouble the conscience and to undermine the courage of our people.

Therefore, gentlemen, with apologies for having spoken at such length—but you will not reproach me for having taken up this question—I conclude with the statement that the French Republic will do no less now than did the Convention, under similar circumstances, at an earlier period of our history.

Russian semi-official Statement regarding the German Peace Proposals, December 14, 1916¹

The new appeal of our enemies is not their first attempt to throw the responsibilities of the war, which they have let loose, upon the Entente Powers. In order to obtain the support of the German people, who are tired of the war, the Berlin Government has many times had recourse to fallacious words of peace, and has frequently, in order to animate its troops, offered prospects of early peace. It had already promised peace when Warsaw was taken and Serbia was conquered, forgetting that such promises, if unfulfilled, would create profound distrust.

In its further efforts, which were similar and due to the same interested considerations, the German Government was obliged to carry this question outside Germany, and all the world recalls these attempts,

¹*The Times*, London, December 15, 1916.

notably its *ballons d'essai* which were sent up in neutral countries, particularly the United States. Seeing the inanity of such methods, which deceived no one, Germany attempted to create a peace atmosphere which would allow her to consolidate her aggressive and Imperialist tendencies, while sowing discord between the Allies, by seeking to make public opinion believe that separate *pourparlers* were in progress between her and the Entente Powers.

That was the period of the persistent reports of a separate peace. Seeing, however, that the Allies rejected with strong unanimity all these attempts, our enemies had to think of a more serious plan. They are to-day making, in spite of their confidence in their military and economic power, an appeal to the United States, Spain, and Switzerland, announcing their anxiety to enter into negotiations for peace.

The lack of sincerity and the object of the German proposal are evident. The enemy Governments have need of heroic measures to complete the gaps in their armies. The German Government, in order to lift up the hearts of its people and to prepare it for fresh sacrifices, is striving to create a favourable atmosphere with the following thesis:—"We are struggling for our existence. We are proposing peace. It is refused us. Therefore, the responsibility for the continuation of the war falls upon our enemies."

The object pursued by Germany is, however, clear. She speaks of respect for the rights of other nations, but at the same time she has already introduced in Belgium, Serbia, Montenegro, and Poland a regime of terror and violence. As for the future, Germany has proclaimed the illusory independence of Poland, she proposes to divide Serbia between Bulgaria and Austria, economically to subjugate Belgium, and to cede to Bulgaria part of Roumanian territory. Everywhere the idea of the hegemony of Germany predominates, and the latest speeches of Herr von Bethmann-Hollweg show up the true aspirations of the German Government.

But to-day, when the Entente Powers have proclaimed their unshakable determination to continue the war to a successful end and to prevent Germany from establishing her hegemony, no favourable ground exists for peace negotiations. Our enemies knew of the speeches of Mr. Lloyd George, M. Briand, Signor Boselli, and the statement of M. Trepoff. They were therefore sure that their proposal was unacceptable. It is so not because the Entente Powers, the friends of peace, are not inclined that way, but because the peace offered by Germany is a snare for public opinion. That is why the enemy Governments carefully avoid mentioning the conditions of peace.

We are sure that this new enterprise of the disturbers of the peace will lead no one astray, and that it is condemned to failure like previous efforts. The Entente Powers would assume a terrible responsibility before their peoples, before all humanity, if they suspended the struggle against Germany's latest attempt to profit by the present situation to implant her hegemony in Europe. All the innumerable sacrifices of the Allies would be nullified by a premature peace with an enemy who is exhausted but not yet brought down.

The firm determination of the Entente Powers to continue the war to final triumph can be weakened by no illusory proposals of the enemy.

Extract from the Speech of Nicolas Pokrovsky, Russian Minister for Foreign Affairs, in the Duma, December 15, 1916¹

I am addressing you immediately on having been appointed to the post of Minister for Foreign Affairs, and am, naturally, not in a position to give you a detailed statement on the political situation of the day. But I feel constrained to inform you without delay and with the supreme authorization of his Imperial Majesty of the attitude of the Russian Government with regard to the application of our enemies, of which you heard yesterday through the telegrams of the news agencies.

Words of peace coming from the side which bears the whole burden of responsibility for the world conflagration, which it started, and which is unparalleled in the annals of history, however far back one may go, were no surprise to the Allies. In the course of the two and a half years that the war has lasted Germany has more than once mentioned peace. She spoke of it to her armies and to her people each time she entered upon a military operation which was to prove "decisive." After each military success, calculated with a view to creating an impression, she put out feelers for a separate peace on one side and another and conducted an active propaganda in the neutral Press. All these German efforts met with the calm and determined resistance of the Allied Powers.

Now, seeing that she is powerless to make a breach in our unshakable alliance, Germany makes an official proposal to open peace negotiations. In order properly to appreciate the meaning of this proposal one must consider its intrinsic worth and the circumstances

¹*The Times*, London, December 16, 1916.

in which it was made. In substance the German proposal contains no tangible indications regarding the nature of the peace which is desired. It repeats the antiquated legend that the war was forced upon the Central Powers, it speaks of the victorious Austro-German armies, and the irresistibility of their defence, and then, proposing the opening of peace negotiations, the Central Powers express the conviction that the offers which they have to make will guarantee the existence, honour, and free development of their own peoples, and are calculated to establish a lasting peace. That is all the communication contains, except a threat to continue the war to a victorious end, and, in the case of refusal, to throw the responsibility for the further spilling of blood on our Allies.

What are the circumstances in which the German proposal was made? The enemy armies devastated and occupy Belgium, Serbia and Montenegro, and a part of France, Russia and Roumania. The Austro-Germans have just proclaimed the illusory independence of a part of Poland, and are by this trying to lay hands on the entire Polish nation. Who, then, with the exception of Germany, could derive any advantage under such conditions by the opening of peace negotiations?

But the motives of the German step will be shown more clearly in relief if one takes into consideration the domestic conditions of our enemies. Without speaking of the unlawful attempts of the Germans to force the population of Russian Poland to take arms against its own country, it will suffice to mention the introduction of general forced labour in Germany to understand how hard is the situation of our enemies. To attempt at the last moment to profit by their fleeting territorial conquests before their domestic weakness was revealed—that was the real meaning of the German proposal. In the event of failure they will exploit at home the refusal of the Allies to accept peace in order to rehabilitate the tottering morale of their populations.

But there is another senseless motive for the step they have taken. Failing to understand the true spirit which animates Russia, our enemies deceive themselves with the vain hope that they will find among us men cowardly enough to allow themselves to be deceived if even for a moment by lying proposals. That will not be. No Russian heart will yield. On the contrary, the whole of Russia will rally all the more closely round its august Sovereign, who declared at the very beginning of the war that he "would not make peace until the last enemy soldier had left our country."

Russia will apply herself with more energy than ever to the realization of the aims proclaimed before you on the day when you reassembled, especially to the positive and general collaboration which constitutes the only sure means of arriving at the end which we all have at heart—namely, the crushing of the enemy. The Russian Government repudiates with indignation the mere idea of suspending the struggle and thereby permitting Germany to take advantage of the last chance she will have of subjecting Europe to her hegemony. All the innumerable sacrifices already made would be in vain if a premature peace were concluded with an enemy whose forces have been shaken, but not broken, an enemy who is seeking a breathing space by making deceitful offers of a permanent peace. In this inflexible decision, Russia is in complete agreement with all her valiant Allies. We are all equally convinced of the vital necessity of carrying on the war to a victorious end, and no subterfuge by our enemies will prevent us from following this path.

Resolution of the Russian Duma against acceptance of the German Peace Proposals, December 15, 1916¹

The Duma having heard the statement of the Minister for Foreign Affairs is unanimously in favour of a categorical refusal by the Allied Governments to enter under present conditions into any peace negotiations whatever. It considers that the German proposals are nothing more than a fresh proof of the weakness of the enemy, and are a hypocritical act from which the enemy expects no real success, but by which he seeks to throw upon others the responsibility for the war and for what has happened during it, and to exculpate itself before public opinion in Germany.

The Duma considers that a premature peace would not only be a brief period of calm, but would involve the danger of another bloody war and renewed deplorable sacrifices on the part of the people.

It considers that a lasting peace will be possible only after a decisive victory over the military power of the enemy, and after the definite renunciation by Germany of the aspirations which render her responsible for the world war and for the horrors by which it is accompanied.

¹*The Times*, London, December 16, 1916.

Speech of Arthur Henderson, unofficial Member of the British Cabinet, London, December 16, 1916¹

The British people, with their national love of peace, were anxious that the real meaning of the German proposals should be appreciated. But the Government knew nothing concerning the text of the proposals, and Germany's motives must for the present remain a matter of speculation. But, judging from past and from recent events, we might anticipate, without over-assumption, that any proposals Germany might put forward would not err on the side of magnanimity.

Any proposals put forward must be examined with the greatest possible care. We of all people must not forget that Germany was prepared for peace with this country as late as August, 1914. But on what conditions? That we were prepared to betray France and acquiesce in the violation of the neutrality of Belgium, which Germany, like ourselves, had on oath sworn to maintain. The lesson to be learned from her present desire for peace was that any proposal received must be scrutinized in the light of our obligations to our Allies, to whom we were pledged to make no separate peace. However convenient it might be for Germany to ignore her responsibility in this great war, however far she might ignore her responsibilities to small nationalities, it was loyalty on our part to our brave and loyal comrades that must bind us to the end.

Subject to these considerations, the people of this country were prepared to-day, as in August, 1914, to accept peace, provided that that peace was both just and permanent. But there was one supreme condition—namely, that the principles governing any decision must be those on which we entered, and on which we were continuing, the war. We entered the war in defence of small nationalities, to defend France from wanton aggression, and to preserve our own security. Indemnity for the past was not enough unless we had guarantees for the future; and guarantees for the future were not enough without ample reparation for all that Belgium, France, Serbia and Poland had suffered. The peace into which we entered must contain guarantees for its own duration. Germany might have such a peace if she furnished us with proof of her good intentions.

But, he concluded, if her present overtures are merely a pretence; if it is shown that she is merely arranging an armistice, to enable her to obtain a breathing-space that will furnish her with the opportunity to lay fresh plans of aggression, then I say, whatever may be the temp-

¹*The Times*, London, December 16, 1916.

tation to the people of these islands, we must set our faces like the steel you work upon against her proposals.

Extract from the Speech of Baron Sonnino, Italian Minister for Foreign Affairs, in the Chamber of Deputies, December 18, 1916¹

The Government knows absolutely nothing regarding the specific conditions of the enemy's peace proposals and regards as an enemy manoeuvre the rumours secretly spread about them. We must remember that none of the Allies could in any way take into consideration any condition offered to it separately. The reply of the Allies will be published as soon as it has been agreed upon.

We all desire a lasting peace, but we consider as such an ordered settlement of which the duration does not depend upon the strength of the chains binding one people to another, but on a just equilibrium between States and respect for the principle of nationality, the rights of nations, and reasons of humanity and civilization. While intensifying our efforts to beat the enemy, we do not aim at an international settlement by servitude and predominance implying the annihilation of peoples and nations. If a serious proposal was made on a solid basis for negotiations satisfying the general demands of justice and civilization, no one would oppose an *a priori* refusal to treat, but many things indicate that that is not the case now. The tone of boasting and insincerity characterizing the preamble to the enemy notes inspires no confidence in the proposals of the Central Empires. The Governments of the Allies must avoid the creation for their populations by a false mirage of vain negotiations of an enormous deception, followed by cruel disappointment.

¹*The Times*, London, December 19, 1916.

President Wilson's Peace Note, December 18, 1916¹*The Secretary of State to Ambassador W. H. Page²*

[TELEGRAM]

DEPARTMENT OF STATE,
Washington, December 18, 1916.

The President directs me to send you the following communication to be presented immediately to the Minister of Foreign Affairs of the Government to which you are accredited:

"The President of the United States has instructed me to suggest to His Majesty's Government a course of action with regard to the present war which he hopes that the British Government will take under consideration as suggested in the most friendly spirit and as coming not only from a friend but also as coming from the representative of a neutral nation whose interests have been most seriously affected by the war and whose concern for its early conclusion arises out of a manifest necessity to determine how best to safeguard those interests if the war is to continue.

"The suggestion which I am instructed to make the President has long had it in mind to offer. He is somewhat embarrassed to offer it at this particular time because it may now seem to have been prompted by the recent overtures of the Central Powers. It is in fact in no way associated with them in its origin and the President would have delayed offering it until those overtures had been answered but for the fact that it also concerns the question of peace and may best be considered in connection with other proposals which have the same end in view. The President can only beg that his suggestion be considered entirely on its own merits and as if it had been made in other circumstances.³

¹Official prints of the Department of State.

²Same *mutatis mutandis* to the American Diplomatic Representatives accredited to all the belligerent Governments and to all neutral Governments for their information.

³In the note addressed to the Representatives of the Central Powers, this paragraph reads as follows:

"The suggestion which I am instructed to make the President has long had it in mind to offer. He is somewhat embarrassed to offer it at this particular time because it may now seem to have been prompted by a desire to play a part in connection with the recent overtures of the Central Powers. It has in fact been in no way suggested by them in its origin and the President would have delayed offering it until those overtures had been independently answered but for the fact that it also concerns the question of peace and may best be considered in connection with other proposals which have the same end in view. The President can only beg that his suggestion be considered entirely on its own merits and as if it had been made in other circumstances."

"The President suggests that an early occasion be sought to call out from all the nations now at war such an avowal of their respective views as to the terms upon which the war might be concluded and the arrangements which would be deemed satisfactory as a guaranty against its renewal or the kindling of any similar conflict in the future as would make it possible frankly to compare them. He is indifferent as to the means taken to accomplish this. He would be happy himself to serve or even to take the initiative in its accomplishment in any way that might prove acceptable, but he has no desire to determine the method or the instrumentality. One way will be as acceptable to him as another if only the great object he has in mind be attained.

"He takes the liberty of calling attention to the fact that the objects which the statesmen of the belligerents on both sides have in mind in this war are virtually the same, as stated in general terms to their own people and to the world. Each side desires to make the rights and privileges of weak peoples and small States as secure against aggression or denial in the future as the rights and privileges of the great and powerful States now at war. Each wishes itself to be made secure in the future, along with all other nations and peoples, against the recurrence of wars like this and against aggression of selfish interference of any kind. Each would be jealous of the formation of any more rival leagues to preserve an uncertain balance of power amidst multiplying suspicions; but each is ready to consider the formation of a league of nations to insure peace and justice throughout the world. Before that final step can be taken, however, each deems it necessary first to settle the issues of the present war upon terms which will certainly safeguard the independence, the territorial integrity, and the political and commercial freedom of the nations involved.

"In the measures to be taken to secure the future peace of the world the people and Government of the United States are as vitally and as directly interested as the Governments now at war. Their interest, moreover, in the means to be adopted to relieve the smaller and weaker peoples of the world of the peril of wrong and violence is as quick and ardent as that of any other people or Government. They stand ready, and even eager, to coöperate in the accomplishment of these ends, when the war is over, with every influence and resource at their command. But the war must first be concluded. The terms upon which it is to be concluded they are not at liberty to suggest; but the President does feel that it is his right and his duty to point out their intimate interest in its conclusion, lest it should presently be too late to accomplish the greater things which lie beyond its con-

clusion, lest the situation of neutral nations, now exceedingly hard to endure, be rendered altogether intolerable, and lest, more than all, an injury be done civilization itself which can never be atoned for or repaired.

"The President therefore feels altogether justified in suggesting an immediate opportunity for a comparison of views as to the terms which must precede those ultimate arrangements for the peace of the world, which all desire and in which the neutral nations as well as those at war are ready to play their full responsible part. If the contest must continue to proceed towards undefined ends by slow attrition until the one group of belligerents or the other is exhausted, if million after million of human lives must continue to be offered up until on the one side or the other there are no more to offer, if resentments must be kindled that can never cool and despairs engendered from which there can be no recovery, hopes of peace and of the willing concert of free peoples will be rendered vain and idle.

"The life of the entire world has been profoundly affected. Every part of the great family of mankind has felt the burden and terror of this unprecedented contest of arms. No nation in the civilized world can be said in truth to stand outside its influence or to be safe against its disturbing effects. And yet the concrete objects for which it is being waged have never been definitively stated.

"The leaders of the several belligerents have, as has been said, stated those objects in general terms. But, stated in general terms, they seem the same on both sides. Never yet have the authoritative spokesmen of either side avowed the precise objects which would, if attained, satisfy them and their people that the war had been fought out. The world has been left to conjecture what definitive results, what actual exchange of guarantees, what political or territorial changes or readjustments, what stage of military success even, would bring the war to an end.

"It may be that peace is nearer than we know; that the terms which the belligerents on the one side and on the other would deem it necessary to insist upon are not so irreconcilable as some have feared; that an interchange of views would clear the way at least for conference and make the permanent concord of the nations a hope of the immediate future, a concert of nations immediately practicable.

"The President is not proposing peace; he is not even offering mediation. He is merely proposing that soundings be taken in order that we may learn, the neutral nations with the belligerent, how near

the haven of peace may be for which all mankind longs with an intense and increasing longing. He believes that the spirit in which he speaks and the objects which he seeks will be understood by all concerned, and he confidently hopes for a response which will bring a new light into the affairs of the world."

LANSING.

**Extracts from the Speech of Lord Curzon in the House of Lords,
December 19, 1916¹**

I hope I shall not be wrong if I state my belief that the friendly welcome which has been accorded to the present Government, not least by your Lordships, has been due to the conviction that a greater and more concentrated effort, more effective and universal organisation, a more and adequate and rapid use of the resources not only of ourselves alone, but of our Allies, are required if we are to carry the war to the successful termination we all desire. This country is not merely willing to be led, but is almost calling to be driven. They desire the vigorous prosecution of the war, a sufficient and ample return for all the sacrifices they have made, reparation by the enemy for his countless and inconceivable crimes, security that those crimes shall not be repeated, and that those sacrifices shall not have been made in vain. They desire that the peace of Europe shall be re-established on the basis of a free and independent existence of nations great and small. They desire as regards ourselves that our own country shall be free from the menace which the triumph of German arms, and still more the triumph of the German spirit, would entail. It is to carry out these intentions that the present Government has come into existence, and by its success or failure in doing so will it be judged.

At the very moment when she is talking of peace Germany is making the most stupendous efforts for the prosecution of the war, and to find new men. She is squeezing possibly the last drop out of the manhood of her nation. She is compelling every man, woman, and boy, between sixteen and sixty, to enter the service of the State. At the same time, with a callous ferocity and disregard of international law, she is driving the population of the territory she has occupied into compulsory service. She is even trying to get an army out of Poland by offering it the illusory boon of "independence." That is the nature of the challenge we have to meet. It has been our object to establish such a system of re-

¹*The Morning Post*, London, December 20, 1916.

cruiting as will ensure that no man is taken for the Army who is capable of rendering more useful service in industry. We ought to have power to see that every man who is not taken into the Army is employed on national work. At present it is only on men fit for military service the nation has the right to call. Unfit men, exempted men, are surely under the same moral obligation. We need to make a swift and effective answer to Germany's latest move, and in my opinion it is not too much to ask the people of this country to take upon themselves in a few months and as free men the obligations which Germany is imposing on herself. As our Army grows our need of munitions grows. A large part of our labour for munition purposes is at present immobile, and we have no power to transfer men from where they are wasting their strength to places where they can be of great service. We have not the organisation for transferring them as volunteers. These are the powers we must take, and this is the organisation we must complete. The matter is not new. It was considered by the War Committee of the late Government and others, and it was decided that the time had come for the adoption of universal national service. It was one of the first matters taken up by the present Government.

Having dealt so far with the domestic programme of the Government I will now refer to the military and political situations. While I do not believe in painting too rosy a picture of affairs, I think we ought not to take a gloomy view. It is true that Germany has captured the capital of Roumania, but your Lordships must not imagine that she has gained all the success even in Roumania that the words of the Imperial Chancellor would appear to suggest. It may be a consolation to your Lordships to know that the oil refineries and stocks in that part of Roumania which is now in the occupation of the Germans were destroyed before the arrival of the Germans. It would be invidious if I were to discuss the cause of Roumania's failure. It is one of the tragic incidents of the war. The only military Power which could come to the assistance of Roumania was Russia. Russia has done all in her power. The utmost we could do was to send supplies, as we did, and to engage the common enemy by an active offensive from our military base at Salonica. What changes have taken place in the external aspect of the war during the present year?

I distrust statistics, at any rate, in casualties in war, nor do I attach too much importance to the fact that since July 1 the combined armies

of France and England have taken 105,000 German prisoners, 150 heavy guns, 200 field guns, and 15,000 machine guns. There have been much more important consequences than this. The Allies have established an incontestable superiority not merely in the fighting strength and stamina of their men, but in artillery and the air. It is clear that the morale of the Germans is greatly shaken and that their forces are sick of it. Evidence is accumulating of the bad interior condition of Germany, in some cases the admitted hunger and in some cases almost starvation, and the progressive physical deterioration of her people. The outlook is not quite so good for the Central Powers as they would have us believe, and our attitude need not be one of despondency or alarm. It is at this moment that Germany has come forward with offers of peace, or rather I can not fairly use the word offer, but rather let me say vague adumbrations and indications of peace. What has been the course of events? First there has been the speech of the Imperial Chancellor in the Reichstag. Next there is the note to the Powers. The note proclaims the indestructible strength of the Central Powers and proclaims that Germany is not only undefeated, but undefeatable. It advances the plea that Germany was constrained to take up arms for the defence of her existence. It avows German respect for the rights of other nations—and expresses a desire to stem the flood of blood, and finally, after this remarkable preamble, it declares that they propose to enter even now, in the hour of their triumph, they propose, as an act of condescension, to enter into peace negotiations. As regards peace, is there a single one of the Allied Powers who would not welcome peace if it is to be a genuine peace, a lasting peace, a peace that could be secured on honorable terms, a peace that would give guarantees for the future? Is there a single Government, statesman, or individual who does not wish to put an end to this conflict, which is turning half the world into a hell and wrecking the brightest prospects of mankind? In what spirit is it proposed and from whom does it come?

Is this the spirit in which your Lordships think that peace proposals should be made? Does it hold out a reasonable prospect of inducing the Allies to lay down their arms? Is there any indication of German desire to make reparation and to give guarantees for the future? So far as we can judge from that speech, and it is all we have to judge by, the spirit which breathes in every word is the spirit of German militarism. While that speech is being made Belgian deportation is going on. It is said that the "peace of God passeth understanding." Surely the

same thing can be said in a different sense of the peace which Germany proposes. We know nothing of that. We have only the menacing tone of the note and the speech which accompanied it. Let me put one more reflection before you. Let no one think for a moment that it is merely by territorial restitution or by reversion to the *status quo ante* that the objects for which the Allies are fighting will be obtained. We are fighting, it is true, to recover for Belgium, France, Russia, Serbia, and Roumania the territories which they have lost, and to secure reparation for the cruel wrongs they have experienced. But you may restore to them all, and more than all, they have lost, you may pile on indemnities which no treasury in Europe could produce, and yet the war would have been in vain if we had no guarantees and no securities against a repetition of Germany's offense. We are not fighting to destroy Germany. Such an idea has never entered into the mind of any thinking human being in this country. But we are fighting to secure that the German spirit shall not crush the free progress of nations and that the armed strength of Germany, augmented and fortified, shall not dominate the future. We are fighting that our grandchildren and our great-grandchildren shall not have, in days when we have passed away, to go again through the experience of the years 1914 to 1917. This generation has suffered in order that the next may live. We are ready enough for peace when these guarantees have been secured and these objects attained. Till then we owe it to the hundreds of thousands of our fellow-countrymen and our Allies, who have shed their blood for us, to be true to the trust of their splendid and uncomplaining sacrifice and to endure to the end.

Extracts from the Speech of Premier Lloyd George in the House of Commons, December 19, 1916¹

I am afraid I shall have to claim the indulgence of the House in making the observations which I have to make in moving the second reading of this Bill. I am still suffering a little from my throat. I appear before the House of Commons to-day with the most terrible responsibility that can fall upon the shoulders of any living man as the chief adviser of the Crown in the most gigantic war in which this country has ever been engaged, a war upon the events of which its destiny depends. It is the greatest war ever waged. The burdens are the heaviest that have been cast upon this or any other country,

¹*The Times*, London, December 20, 1916.

and the issues which hang on it are the gravest that have been attached to any conflict in which humanity has ever been involved.

The responsibilities of the new Government have been suddenly accentuated by a declaration made by the German Chancellor, and I propose to deal with that at once. The statement made by him in the German Reichstag has been followed by a note presented to us by the United States of America without any note or comment. The answer that will be given by the Government will be given in full accord with all our brave Allies. Naturally there has been an interchange of views, not upon the note, because it has only recently arrived, but upon the speech which propelled it, and, inasmuch as the note itself is practically only a reproduction or certainly a paraphrase of the speech, the subject-matter of the note itself has been discussed informally between the Allies, and I am very glad to be able to state that we have each of us, separately and independently, arrived at identical conclusions. I am very glad that the first answer that was given to the statement of the German Chancellor was given by France and by Russia. They have the unquestioned right to give the first answer to such an invitation. The enemy is still on their soil. Their sacrifices have been greater. The answer they have given has already appeared in all the papers, and I simply stand here to-day on behalf of the Government to give a clear and definite support to the statement which they have already made. Let us examine what the statement is and examine it calmly. Any man or set of men who wantonly or without sufficient cause prolong a terrible conflict like this would have on his soul a crime that oceans could not cleanse. Upon the other hand it is equally true that any man or set of men who from a sense of weariness or despair abandoned the struggle without achieving the high purpose for which he had entered into it would have been guilty of the costliest act of poltroonery ever perpetrated by any statesman. I should like to quote the very well-known words of Abraham Lincoln under similar conditions:—"We accepted this war for an object, a worthy object, and the war will end when that object is attained. Under God I hope it will never end until that time." Are we likely to achieve that object by accepting the invitation of the German Chancellor? That is the only question we have to put to ourselves.

There has been some talk about proposals of peace. What are the proposals? There are none. To enter, on the invitation of Germany, proclaiming herself victorious, without any knowledge of the proposals she proposes to make, into a conference is to put our heads

into a noose with the rope end in the hands of Germany. This country is not altogether without experience in these matters. This is not the first time we have fought a great military despotism that was overshadowing Europe, and it will not be the first time we shall have helped to overthrow military despotism. We have an uncomfortable historical memory of these things, and we can recall when one of the greatest of these despots had a purpose to serve in the working of his nefarious schemes. His favorite device was to appear in the garb of the Angel of Peace, and he usually appeared under two conditions. When he wished for time to assimilate his conquests or to reorganize his forces for fresh conquests, or, secondly, when his subjects showed symptoms of fatigue and war weariness the appeal was always made in the name of humanity. He demanded an end to bloodshed, at which he professed himself to be horrified, but for which he himself was mainly responsible. Our ancestors were taken in once, and bitterly they and Europe rue it. The time was devoted to reorganizing his forces for a deadlier attack than ever upon the liberties of Europe, and examples of that kind cause us to regard this note with a considerable measure of reminiscent disquietude.

We feel that we ought to know, before we can give favourable consideration to such an invitation, that Germany is prepared to accede to the only terms on which it is possible for peace to be obtained and maintained in Europe. What are those terms? They have been repeatedly stated by all the leading statesmen of the Allies. My right hon. friend has stated them repeatedly here and outside, and all I can do is to quote, as my right hon. friend the leader of the House did last week, practically the statement of the terms put forward by my right hon. friend—

“Restitution, reparation, guarantee against repetition”—so that there shall be no mistake, and it is important that there should be no mistake in a matter of life and death to millions.

Let me repeat again—complete restitution, full reparation, effectual guarantee. Did the German Chancellor use a single phrase to indicate that he was prepared to accept such a peace? Was there a hint of restitution, was there any suggestion of reparation, was there any invitation of any security for the future that this outrage on civilization would not be again perpetrated at the first profitable opportunity? The very substance and style of this speech constitutes a denial of peace on the only terms on which peace is possible. He is not even conscious now that Germany has committed any offence against the rights of free nations. Listen to this from

the note:—"Not for an instant have they (they being the Central Powers) swerved from the conviction that respect of the rights of other nations is not in any degree incompatible with their own rights and legitimate interests." When did they discover that? Where was the respect for the rights of other nations in Belgium and Serbia? That was self-defence! Menaced, I suppose, by the overwhelming armies of Belgium, the Germans had been intimidated into invading Belgium, and the burning of Belgian cities and villages, to the massacring of thousands of inhabitants, old and young, to the carrying of the survivors into bondage. Yea, and they were carrying them into slavery at the very moment when this note was being written about the unswerving conviction as to the respect for the root of the rights of other nations. Are these outrages the legitimate interest of Germany? We must know. That is not the moment for peace. If excuses of this kind for palpable crimes can be put forward two and a half years after the exposure by grim facts of the guarantee, is there, I ask in all solemnity, any guarantee that similar subterfuges will not be used in the future to overthrow any treaty of peace you may enter into with Prussian militarism.

This note and that speech prove that not yet have they learned the very alphabet of respect for the rights of others. Without reparation, peace is impossible. Are all these outrages against humanity on land and on sea to be liquidated by a few pious phrases about humanity? Is there to be no reckoning for them? Are we to grasp the hand that perpetrated these atrocities in friendship without any reparation being tendered or given? I am told that we are to begin, Germany helping us, to exact reparation for all future violence committed after the war. We have begun already. It has already cost us so much, and we must exact it now so as not to leave such a grim inheritance to our children. As much as we all long for peace, deeply as we are horrified with war, this note and the speech which heralded it do not afford us much encouragement and hope for an honourable and lasting peace. What hope is given in that speech that the whole root and cause of this great bitterness, the arrogant spirit of the Prussian military caste, will not be as dominant as ever if we patch up peace now? Why, the very speech in which these peace suggestions are made resound to the boast of Prussian military triumph. It is a long pæan over the victories of von Hindenburg and his legions. The very appeal for peace was delivered ostentatiously from the triumphal chariot of Prussian militarism.

We must keep a steadfast eye upon the purpose for which we entered the war, otherwise the great sacrifices we have been making will be in vain. The German note states that it was for the defence of their existence and the freedom of national development that the Central Powers were constrained to take up arms. Such phrases even deceive those who pen them. They are intended to delude the German nation into supporting the designs of the Prussian military caste. Who ever wished to put an end to their national existence or the freedom of their national development? We welcomed their development as long as it was on the paths of peace—the greater their development upon that road, the greater would all humanity be enriched by their efforts. That was not our desire, and it is not our purpose now.

The Allies entered this war to defend Europe against the aggression of Prussian military domination, and, having begun it, they must insist that the only end is the most complete and effective guarantee against the possibility of that caste ever again disturbing the peace of Europe. Prussia, since she got into the hands of that caste, has been a bad neighbour, arrogant, threatening, bullying, shifting boundaries at her will, taking one fair field after another from weaker neighbours, and adding them to her own domain. With her belt ostentatiously full of weapons of offence, and ready at a moment's notice to use them, she has always been an unpleasant, disturbing neighbour in Europe. She got thoroughly on the nerves of Europe. There was no peace near where she dwelt. It is difficult for those who are fortunate enough to live thousands of miles away to understand what it has meant to those who live near. Even here, with the protection of the broad seas between us, we know what a disturbing factor the Prussians were with their constant naval menace.

But even we can hardly realize what it has meant to France and to Russia. Several times there were threats directed to them even within the lifetime of this generation which presented the alternative of war or humiliation. There were many of us who hoped that internal influences in Germany would have been strong enough to check and ultimately to eliminate these feelings. All our hopes proved illusory, and now that this great war has been forced by the Prussian military leaders upon France, Russia, Italy, and ourselves, it would be folly, it would be a cruel folly, not to see to it that this swashbuckling through the streets of Europe to the disturbance of all harmless and peaceful citizens shall be dealt with now as an offence against the law of nations. The mere word that

led Belgium to her own destruction will not satisfy Europe any more. We all believed it. We all trusted it. It gave way at the first pressure of temptation, and Europe has been plunged into the vortex of blood.

We will therefore wait until we hear what terms and guarantees the German Government offer other than those, better than those, surer than those, which she so lightly broke. Meantime, we shall put our trust in an unbroken Army rather than in a broken faith.

For the moment I do not think it would be advisable for me to add anything upon this particular invitation. A formal reply will be delivered by the Allies in the course of the next few days. I shall therefore proceed with the other part of the task which I have in front of me. What is the urgent task in front of the Government? To complete, and make even more effective, the mobilization of all our national resources—a mobilization which has been going on since the commencement of the war—so as to enable the nation to bear the strain, however prolonged, and to march through to victory, however lengthy, and however exhausted may be the task. It is a gigantic task.

Let me give this word of warning, if there be any who have given their confidence to the new Administration in expectation of a speedy victory, they will be doomed to disappointment. I am not going to paint a gloomy picture of the military situation. If I did it would not be a true picture. But I must paint a stern picture, because that accurately represents the facts.

There is a time in every prolonged and fierce war when in the passion and rage of conflict men forget the high purpose with which they entered it. This is a struggle for international right, international honour, international good faith—the channel along which peace, honour, and good will must flow amongst men. The embankment laboriously built up by generations of men against barbarism has been broken, and had not the might of Britain passed into the breach, Europe would have been inundated with a flood of savagery and unbridled lust of power. The plain sense of fair-play amongst nations, the growth of an international conscience, the protection of the weak against the strong by the stronger, the consciousness that justice has a more powerful backing in this world than greed, the knowledge that any outrage upon fair dealing between nations, great or small, will meet with prompt and meritable chastisement—these constitute the causeway along which humanity

was progressing slowly to higher things. The triumph of pressure would sweep it all away and leave mankind to struggle helpless in the morass. That is why since this war began I have known but one political aim; and for it I have fought with a single eye—that is the rescue of mankind from the most overwhelming catastrophe that has ever yet menaced its well-being.

Extracts from the Speech of Former Premier Asquith in the House of Commons, December 19, 1916¹

I think what I have said is sufficient to show that the use we have made of the methods open to us—naval, military, and economic—has not been ineffectual, and if further proof were required it is to be found in the so-called peace proposals which have been somewhat clumsily projected into space from Berlin. It is true that these proposals are wrapped up in the familiar dialect of Prussian arrogance, but how comes it that a nation which, after two years of war, professes itself conscious of military superiority and confident of ultimate victory should begin to whisper, nay, not to whisper, but to shout so that all the world can hear it, the word “peace”? Is it a sudden access of chivalry? Why and when has the German Chancellor become so acutely sensitive to what he calls the dictates of humanity? No; without being uncharitable we may well look elsewhere for the origin of this pronouncement. It is born of military and economic necessity. When I moved the last Vote of Credit I said there was no one among us who did not yearn for peace, but that it must be an honourable and not a shamefaced peace; it must be a peace that promised to be durable and not a patched-up and precarious compromise; it must be a peace which achieved the purpose for which we entered on the war. Such a peace we would gladly accept. Anything short of it we were bound to repudiate by every obligation of honour, and above all by the debt we owe to those, and especially to the young, who have given their lives for what they and we believed to be a worthy cause. Since I spoke two months ago their ranks have been sadly and steadily reinforced. I should like to refer in passing for a moment to one of them, a friend and colleague of mine, Lord Lucas. Apart from the advantages of birth and fortune he was a man of singularly winning personality, fine intelligence, and with the strongest sense of public duty. He worked inconspicuously but hard in the early days of the Territorial Army. He served for some years at the War Office and afterwards became a member of the Cabinet. At the time of the

¹*The Morning Post*, London, December 20, 1916.

Coalition he stood aside without a murmur and volunteered straight away for the Royal Flying Corps. Now he has met his death in a gallant reconnoitering raid over the German lines. He was not, I think, more than forty. He had a full and fruitful life. Nor can we or ought we forget the countless victims, both among our own people and among the Allies, of the ruthless and organised violation of the humane restrictions by which both on land and sea the necessary horrors of war have been hitherto mitigated. For my own part I say plainly and emphatically that I see nothing in the note of the German Government which gives me the least reason to believe that they are in a mood to give to the Allies what the last time I spoke I declared to be essential—reparation and security.

If they are in the right mood—if they are prepared to give us reparation for the past and security for the future, let them say so. While I was at the head of the Government, on several occasions I indicated, I believe, in quite unambiguous language, the minimum of the Allies' demands, before they put up their swords, as well as the general character of the ultimate international status upon which our hopes and desires are set. I have no longer authority to speak for the Government or the nation, but I do not suppose the House or the country are going back from what I said in their name and on their behalf. It is not we that stand in the way of peace when we decline, as I hope we shall, to enter blindfold into the parleys which start from nothing, and therefore can lead to nothing. Peace we all desire, but peace can only come—peace, I mean, that is worthy the name and that satisfies the definition of the word—peace will only come on the terms that atonement is made for past wrongs, that the weak and the downtrodden are restored, and that the faith of treaties and the sovereignty of public law are securely enthroned over the nations of the world.

Speech of Bonar Law, Chancellor of the Exchequer, in the House of Commons, December 21, 1916¹

The House will readily understand that I am divided between two desires. It is the general desire of the House, I think, that we should rise to-morrow, and if that is to be done it is quite impossible that a subject so vast as that which we have just been discussing can be properly debated to-night. I am going to try to set an example by saying very little indeed on the burning questions which have been

¹*The Times*, London, December 22, 1916.

raised in the course of the debate. In regard to the speech of the hon. member who has just sat down, I at least who have only run vicarious risks have no right to throw taunts at a man who has had his place in the fighting line. At the same time, I am compelled to say that if the spirit of the speech to which we have just listened were to permeate this country, then, in my belief, all the blood and treasure which have been spent in this war will have been spent in vain. I do not think that he or anyone needs to impress upon us what are the horrors of this war.

If there were ever any who love war for itself—I have always hated it—if there were any whose imaginations were moved by the pomp and panoply of war, we know better now what it is. It is not glorious victories, or the hope of them, that is moving the hearts of the people of this country. What we think of is the men—our own nearest relations—who are suffering the hardships which have been pointed out to us. What we are thinking of are the desolate homes to which life will never return again in this world. What we are thinking of are the maimed and wounded whom we see going about our streets. We do not love war, and if I saw any prospect of securing the objects for which we have been fighting by a peace to-morrow, there is no man in this House who would welcome it more gladly than I would.

But what is the position? The hon. gentleman says—I hope no one will think that in quoting his words I have any party view in mind—“Let us trust to the old Liberal traditions; let us trust to the good hearts of those we are dealing with.” Why are we in this war to-day? Why are we suffering the terrible agonies which this nation is enduring? It is because we did trust Germany; because we did believe that the crimes which have been committed by them would never be committed by any human being. It is all very well to say, “Let us get terms of peace.” Can you get any terms of peace more binding than the treaty to protect the neutrality of Belgium? Can you come to any conclusion upon paper or by promise which will give us greater security than we had before this war broke out? Where are we to find them? I hope that not this country alone, but all the neutral nations of the world, will understand the position that has now arisen. Germany has made a proposal of peace. On what basis? On the basis of her victorious army.

The hon. member who spoke last tells us that if we win the victory there will be conscription for ever in this country. But what will be the position if peace is settled on the basis of a victorious German army? Is there any man in this House who has honestly considered not merely the conditions in which this war was forced on

the world, but the way in which the war has been carried on—is there any man in this House who honestly believes that the dangers and miseries from which we have suffered can be cured in any other way than by making the Germans realize that frightfulness does not pay, and that their militarism is not going to rule the world?

I ask the House to realize what it is we are fighting for. We are not fighting for territory; we are not fighting for the greater strength of the nations who are fighting. We are fighting for two things, to put it in a nutshell: We are fighting for peace now, but we are also fighting for security for peace in the time to come. When this German peace proposal comes before us, not only based on German victories, but when they claim that they are acting on humanitarian grounds, when they treat it, to put it at the best, from their point of view, as if they and the Allies were at least equal—let the House consider what has happened in this war. Let them consider the outrages in Belgium, the outrages on sea and land, the massacres in Armenia, which Germany could have stopped at a word, if she had wished to do so.

Let them realize that this war will have been fought in vain, utterly in vain, unless we can make sure that it shall never again be in the power of a single man or of a group of men to plunge the world into miseries such as I have described.

When the hon. gentleman talks about peace on these terms, I ask anyone in this House or in the country this question: Is there to be no reparation for the wrong? Is the peace to come on this basis, that the greatest crime in the world's history is to go absolutely unpunished? It is not vindictiveness to say that. It is my firm belief that unless all the nations of the world can be made to realize that these moral forces of which the hon. gentleman spoke have to be shown in action—unless we realize that, there never can be an enduring peace in this world. I am not afraid of my countrymen. We have been told that the troops at the front will fight to the end, to secure what they think is necessary as a result of this war. I am sure that they will. I am sure also that our fellow countrymen at home who up till now have made few sacrifices, except the sacrifice of those dear to them, are determined in this matter, and that if they can be made to believe, as I am sure they can, that the objects for which we are fighting can be secured, then there is no sacrifice which they will not be prepared to make. I am afraid I have said more than I intended when I rose, but I could not refrain from expressing what I felt on this subject.

Swiss Reply to President Wilson's Peace Note, December 23, 1916¹

The President of the United States of America, with whom the Swiss Federal Council, guided by its warm desire that the hostilities may soon come to an end, has for a considerable time been in touch, had the kindness to apprise the Federal Council of the peace note sent to the Governments of the Central and Entente Powers. In that note President Wilson discusses the great desirability of international agreements for the purpose of avoiding more effectively and permanently the occurrence of catastrophes such as the one under which the peoples are suffering to-day. In this connection he lays particular stress on the necessity for bringing about the end of the present war. Without making peace proposals himself or offering mediation, he confines himself to sounding as to whether mankind may hope to have approached the haven of peace.

The most meritorious personal initiative of President Wilson will find a mighty echo in Switzerland. True to the obligations arising from observing the strictest neutrality, united by the same friendship with the States of both warring groups of powers, situated like an island amidst the seething waves of the terrible world war, with its ideal and material interests most sensibly jeopardized and violated, our country is filled with a deep longing for peace, and ready to assist by its small means to stop the endless sufferings caused by the war and brought before its eyes by daily contact with the interned, the severely wounded, and those expelled, and to establish the foundations for a beneficial cooperation of the peoples.

The Swiss Federal Council is therefore glad to seize the opportunity to support the efforts of the President of the United States. It would consider itself happy if it could act in any, no matter how modest a way, for the *rapprochement* of the peoples now engaged in the struggle, and for reaching a lasting peace.

¹The New York Times, December 25, 1916.

Swiss Peace Note in support of President Wilson, December 23,
1916¹

The President of the United States of America has just addressed to the Governments of the Entente and to the Central Powers a note in favour of peace. He has been good enough to communicate it to the Swiss Federal Council, which, inspired by the ardent desire to see an early cessation of hostilities, got into touch with him as long as five weeks ago.

In this note President Wilson recalls how desirable it is to come to international agreements with a view to avoiding, in a permanent and sure manner, such catastrophes as those which the peoples have to suffer to-day. Before all, he insists upon the necessity of putting an end to the present war. He himself does not formulate peace proposals, nor does he propose his mediation. He limits himself to sounding the belligerents in order to ascertain whether humanity may hope to-day that it has advanced towards a beneficent peace.

The generous personal initiative of President Wilson will not fail to awaken a profound echo in Switzerland. Faithful to the duties which the strictest observation of neutrality imposes upon her, united by the same friendship to the two groups of Powers at present at war, isolated in the midst of the frightful *mêlée* of the peoples, seriously threatened and affected in her spiritual and material interests, our country longs for peace.

Switzerland is ready to aid with all her feeble strength in putting an end to the sufferings of war which she sees being endured every day by the interned, the seriously wounded, and the deported. She, too, is willing to lay the foundations for a fruitful collaboration of the peoples. That is why the Swiss Federal Council seizes with joy the opportunity to support the efforts of the President of the United States of America. She would esteem herself happy if she

¹*The Times*, London, December 26, 1916. Addressed to all the belligerent Governments. Norway, Sweden and Denmark likewise addressed these Governments in support of President Wilson, in an identical note of December 22, 1916, no official text of which is available. These notes were briefly acknowledged by the Entente Allies on January 17, 1917, the four States being referred for fuller reply to the joint note to President Wilson of January 10, 1917. *Ibid.*, January 18, 1917. For the replies of the Central Governments to the Swiss note, see *post*, pp. 36, 37. Germany, on January 1, 1917, briefly acknowledged the Scandinavian note, concluding with the remark: "It depends upon the reply of the Entente whether the attempt to give back to the world the blessings of peace will be crowned with success." *The New York Times*, January 4, 1917. For the Austro-Hungarian reply to the Scandinavian note, see *post*, p. 45.

could, even in the most modest measure, work for the *rapprochement* of the nations at war and the establishment of a lasting peace.

German Reply to President Wilson's Peace Note, December 26,
1916¹

Ambassador Gerard to the Secretary of State

[TELEGRAM—PARAPHRASE]

AMERICAN EMBASSY,
Berlin, December 26, 1916.

Mr. Gerard reports receipt of a note from the German Foreign Office, dated December 26, 1916, as follows:

"FOREIGN OFFICE,
"Berlin, December 26, 1916.

"With reference to the esteemed communication of December 21, Foreign Office No. 15118, the undersigned has the honor to reply as follows: To His Excellency the Ambassador of the United States of America, Mr. James W. Gerard.

"The Imperial Government has accepted and considered in the friendly spirit which is apparent in the communication of the President, noble initiative of the President looking to the creation of bases for the foundation of a lasting peace. The President discloses the aim which lies next to his heart and leaves the choice of the way open. A direct exchange of views appears to the Imperial Government as the most suitable way of arriving at the desired result. The Imperial Government has the honor, therefore, in the sense of its declaration of the 12th instant, which offered the hand for peace negotiations, to propose the speedy assembly, on neutral ground, of delegates of the warring States.

"It is also the view of the Imperial Government that the great work for the prevention of future wars can first be taken up only after the ending of the present conflict of exhaustion. The Imperial Government is ready, when this point has been reached, to cooperate with the United States at this sublime task.

"The undersigned, while permitting himself to have recourse to good offices of His Excellency the Ambassador in connection with the transmission of the above reply to the President of the United

¹Official print of the Department of State.

States, avails himself of this opportunity to renew the assurances of his highest consideration.

"ZIMMERMAN."

**Austro-Hungarian Reply to President Wilson's Peace Note,
December 26, 1916¹**

Ambassador Penfield to the Secretary of State

[TELEGRAM]

AMERICAN EMBASSY,
Vienna, December 26, 1916.

Following, dated December 26, received to-day from Austro-Hungarian Ministry for Foreign Affairs:

"AIDE MEMOIRE

"In reply to the *aide memoire* communicated on the 22d instant by His Excellency the American Ambassador, containing the proposals of the President of the United States of America for an exchange of views among the powers at present at war for the eventual establishment of peace, the Imperial and Royal Government desires particularly to point out that in considering the noble proposal of the President it is guided by the same spirit of amity and complaisance as finds expression therein.

"The President desires to establish a basis for a lasting peace without wishing to indicate the ways and means. The Imperial and Royal Government considers a direct exchange of views among the belligerents to be the most suitable way of attaining this end. Adverting to its declaration of the 12th instant, in which it announced its readiness to enter into peace negotiations, it now has the honor to propose that representatives of the belligerent powers convene at an early date at some place on neutral ground.

"The Imperial and Royal Government likewise concurs in the opinion of the President that only after the termination of the present war will it be possible to undertake the great and desirable work of the prevention of future wars. At an appropriate time it will be willing to cooperate with the United States of America for the realization of this noble aim."

PENFIELD.

¹Official print of the Department of State.

**Turkish Reply to President Wilson's Peace Note, December 26,
1916¹**

Ambassador Elkus to the Secretary of State

[TELEGRAM]

AMERICAN EMBASSY,

Constantinople, December 26, 1916.

In reply to the President's message communicated to the Sublime Porte on the 23d instant, Minister for Foreign Affairs handed me to-day a note of which the following is a translation:

"MR. AMBASSADOR: In reply to the note which Your Excellency was pleased to deliver to me under date of the twenty-third instant, number 2107, containing certain suggestions of the President of the United States, I have the honor to communicate to Your Excellency the following:

"The generous initiative of the President, tending to create bases for the reestablishment of peace, has been received and taken into consideration by the Imperial Ottoman Government in the same friendly obliging (?) which manifests itself in the President's communication. The President indicates the object which he has at heart and leaves open the choice of that path leading to this object. The Imperial Government considers a direct exchange of ideas as the most efficacious means of attaining the desired result.

"In conformity with its declaration of the twelfth of this month, in which it stretched forth its hand for peace negotiations, the Imperial Government has the honor of proposing the immediate meeting, in a neutral country, of delegates of the belligerent powers.

"The Imperial Government is likewise of opinion that the great work of preventing future wars can only be commenced after the end of the present struggle between the nations. When this moment shall have arrived the Imperial Government will be pleased [to] collaborate with the United States of America and with the other neutral powers in this sublime task.

"(Signed) HALIL."
ELKUS.

**Austro-Hungarian Reply to the Swiss Peace Note, December 27,
1916²**

[TRANSLATION]

The undersigned, Minister for Foreign Affairs, has had the honor

¹Official print of the Department of State.

²*Le Figaro*, Paris, December 28, 1916.

to receive the esteemed note of December 23d, in which the Minister Plenipotentiary of Switzerland, Dr. Burckhardt, was good enough to communicate to us, under instructions, the desire of the Swiss Federal Council to endorse the initiative taken by the President of the United States with the belligerent Governments for the purpose of ending the present war and of effectively providing against all war in the future.

The noble efforts of President Wilson received a most cordial welcome from the Imperial and Royal Government, to which it gave expression in the note delivered yesterday to the American Ambassador at Vienna, a copy of which is attached hereto with the request that the Minister of Switzerland be good enough to bring this document to the attention of the Swiss Federal Council.

The undersigned, Minister for Foreign Affairs, permits himself to add that the Imperial and Royal Government views the endorsement by the Federal Government of the efforts of President Wilson as the expression of the noble and humanitarian sentiments which Switzerland has manifested since the beginning of the war with regard to all the belligerent Powers and which it has put in practice in so generous and friendly a manner.

German Reply to the Swiss Peace Note, December 28, 1916¹

The Imperial Government has taken note of the fact that the Swiss Federal Council, as a result of its having placed itself in communication some time ago with the President of the United States of America, is also ready to take action side by side with them towards bringing about an understanding between the belligerent nations and towards the attainment of a lasting peace. The spirit of true humanity by which the step of the Swiss Federal Council is inspired is fully appreciated and esteemed by the Imperial Government.

The Imperial Government has informed the President of the United States that a direct exchange of views seems to them to be the most suitable means of obtaining the desired result. Led by the same considerations which caused Germany on December 12 to offer her hand for peace negotiations, the German Government has proposed an immediate meeting of delegates of all the belligerents at a neutral

¹*The Times*, London, December 29, 1916.

place. In agreement with the President of the United States the Imperial Government is of opinion that the great work of preventing future wars can only be taken in hand after the present world war has terminated. As soon as that moment has come they will be joyfully ready to cooperate in this sublime task.

If Switzerland, which, faithful to the country's noble traditions in mitigating the sufferings caused by the present war, has deserved imperishable merit, will also contribute to safeguarding the world's peace, the German nation and Government will highly welcome that.

**Scandinavian Reply to President Wilson's Peace Note,
December 29, 1916¹**

It is with the liveliest interest that the Norwegian Government has learned of the proposals which the President of the United States has just made with the purpose of facilitating measures looking toward the establishment of a durable peace, while at the same time seeking to avoid any interference which could cause offense to legitimate sentiments.

The Norwegian Government would consider itself failing in its duties toward its own people and toward humanity if it did not express its deepest sympathy with all efforts which would contribute to put an end to the ever-increasing suffering and the moral and material losses. It has every hope that the initiative of President Wilson will arrive at a result worthy of the high purpose which inspires it.

**Entente Reply to the Peace Note of Germany and Her Allies,
December 30, 1916²**

The Allied Governments of Russia, France, Great Britain, Japan, Italy, Serbia, Belgium, Montenegro, Portugal and Roumania, united for the defence of the freedom of nations and faithful to their undertakings not to lay down their arms except in common accord, have decided to return a joint answer to the illusory peace proposals which

¹*The New York Times*, December 30, 1916. Identical note of Norway, Sweden and Denmark.

²*The Times*, London, January 1, 1917.

have been addressed to them by the Governments of the enemy Powers through the intermediary of the United States, Spain, Switzerland, and the Netherlands.

As a prelude to any reply, the Allied Powers feel bound to protest strongly against the two material assertions made in the note from the enemy Powers, the one professing to throw upon the Allies the responsibility of the war, and the other proclaiming the victory of the Central Powers.

The Allies can not admit a claim which is thus untrue in each particular, and is sufficient alone to render sterile all attempt at negotiations.

The Allied nations have for 30 months been engaged in [*subissent*—have had to endure] a war which they had done everything to avoid. They have shown by their actions their devotion to peace. This devotion is as strong to-day as it was in 1914; and after the violation by Germany of her solemn engagements, Germany's promise is no sufficient foundation on which to re-establish the peace which she broke.

A mere suggestion, without statement of terms, that negotiations should be opened, is not an offer of peace. The putting forward by the Imperial Government of a sham [*prétendue*—pretended] proposal, lacking all substance and precision, would appear to be less an offer of peace than a war manoeuvre.

It is founded on a calculated misinterpretation of the character of the struggle in the past, the present, and the future.

As for the past, the German note takes no account of the facts, dates, and figures which establish that the war was desired, provoked, and declared by Germany and Austria-Hungary.

At the Hague Conference it was the German delegate who refused all proposals for disarmament. In July, 1914, it was Austria-Hungary who, after having addressed to Serbia an unprecedented ultimatum, declared war upon her in spite of the satisfaction which had at once been accorded. The Central Empires then rejected all attempts made by the Entente to bring about a pacific solution of a purely local conflict. Great Britain suggested a Conference, France proposed an International Commission, the Emperor of Russia asked the German Emperor to go to arbitration, and Russia and Austria-Hungary came to an understanding on the eve of the conflict; but to all these efforts Germany gave neither answer nor effect. Belgium was invaded by an Empire which had guaranteed her neutrality and which has had the assurance to proclaim that treaties were "scraps of paper" and that "necessity knows no law."

At the present moment these sham [*prétendues*—pretended] offers on the part of Germany rest on a "War Map" of Europe alone, which represents nothing more than a superficial and passing phase of the situation, and not the real strength of the belligerents. A peace concluded upon these terms would be only to the advantage of the aggressors, who, after imagining that they would reach their goal in two months, discovered after two years that they could never attain it.

As for the future, the disasters caused by the German declaration of war and the innumerable outrages committed by Germany and her Allies against both belligerents and neutrals demand penalties [*sanctions*—retribution], reparation, and guarantees; Germany avoids the mention of any of these.

In reality these overtures made by the Central Powers are nothing more than a calculated attempt to influence the future course of the war, and to end it by imposing a German peace.

The object of these overtures is to create dissension in public opinion [*troubler l'opinion*—disturb opinion] in allied countries. But that public opinion has, in spite of all the sacrifices endured by the Allies, already given its answer with admirable firmness, and has denounced the empty pretence [*vide*—emptiness] of the declaration of the Enemy Powers.

They have the further object of stiffening public opinion in Germany and in the countries allied to her; one and all, already severely tried by their losses, worn out by economic pressure and crushed by the supreme effort which has been imposed upon their inhabitants.

They endeavour to deceive and intimidate public opinion in neutral countries whose inhabitants have long since made up their minds where the initial responsibility rests, have recognized existing responsibilities, and are far too enlightened to favour the designs of Germany by abandoning the defence of human freedom.

Finally, these overtures attempt to justify in advance in the eyes of the world a new series of crimes—submarine warfares, deportations, forced labour and forced enlistment of inhabitants against their own countries, and violations of neutrality.

Fully conscious of the gravity of this moment, but equally conscious of its requirements, the Allied Governments, closely united to one another and in perfect sympathy with their peoples, refuse to consider a proposal which is empty and insincere.

Once again the Allies declare that no peace is possible so long as they have not secured reparation of violated rights and liberties,

recognition of the principle of nationalities, and of the free existence of small states; so long as they have not brought about a settlement calculated to end, once and for all, forces [*causes*—causes] which have contributed a perpetual menace to the nations [*qui depuis si longtemps ont menacé les nations*—which have so long threatened the nations], and to afford the only effective guarantees for the future security of the world.

In conclusion, the Allied Powers think it necessary to put forward the following considerations, which show the special situation of Belgium after two and a half years of war.

In virtue of international treaties, signed by five great European Powers, of whom Germany was one, Belgium enjoyed, before the war, a special status, rendering her territory inviolable and placing her, under the guarantee of the Powers, outside all European conflicts. She was however, in spite of these treaties, the first to suffer the aggression of Germany. For this reason the Belgian Government think it necessary to define the aims which Belgium has never ceased to pursue, while fighting side by side with the Entente Powers for right and justice.

Belgium has always scrupulously fulfilled the duties which her neutrality imposed upon her. She has taken up arms to defend her independence and her neutrality violated by Germany, and to show that she remains faithful [*et pour rester fidèle*—and to be true] to her international obligations. On August 4, 1914, in the Reichstag, the German Chancellor admitted that this aggression constituted an injustice contrary to the laws of nations and pledged himself in the name of Germany to repair it.

During two and a half years this injustice has been cruelly aggravated by the proceedings of the occupying forces, which have exhausted the resources of the country, ruined its industries, devastated its towns and villages, and have been responsible for innumerable massacres, executions and imprisonments. At this very moment, while Germany is proclaiming peace and humanity to the world, she is deporting Belgian citizens by thousands and reducing them to slavery.

Belgium before the war asked for nothing but to live in harmony with all her neighbours. Her King and her Government have but one aim—the re-establishment of peace and justice [*droit*—right]. But they only desire [desire only] a peace which would assure to their country legitimate reparation, guarantees, and safeguards for the future.

Bulgarian Reply to President Wilson's Peace Note, December 30, 1916¹

Consul General Murphy to the Secretary of State

[TELEGRAM]

AMERICAN CONSULATE GENERAL,
Sofia, December 30, 1916.

Referring circular eighteenth.

Bulgarian foreign minister responds following:

"I have had the honor to receive the letter you were pleased to address to me on the 28th of this month to acquaint me with the step taken by Mr. President Wilson in favor of peace, and I hasten to communicate to you the following answer of the Bulgarian Government:

"The generous initiative of the President of the United States tending to create bases for the restoration of peace, was cordially received and taken into consideration by the Royal Government in the same friendly spirit which is evidenced by the presidential communication. The President indicates the object he has at heart and leaves open the choice of the way leading to that object. The Royal Government considers a direct exchange of views to be the most efficacious way to attain the desired end. In accordance with its declaration of the 12th of December inst., which extends a hand for peace negotiations, it has the honor to propose an immediate meeting at one place of delegates of the belligerent powers. The Royal Government shares the view that the great undertaking which consists in preventing future war can only be initiated after the close of present conflict of nations. When that time comes, the Royal Government will be glad to cooperate with the United States of America and other neutral nations in that sublime endeavor.

"Be pleased to accept, Mr. Consul General, the assurances of my high consideration.

"(Signed) DOCTOR RADOSLAVOFF."
MURPHY.

King Constantine's Reply to President Wilson's Peace Note, December 30, 1916²

I wish to express, Mr. President, feelings of sincere admiration and lively sympathy for the generous initiative you have just taken

¹Official print of the Department of State.

²*The New York Times*, January 1, 1917. For the formal reply of the Greek Government

with the view to ascertaining whether the moment is not propitious for a negotiable end of the bloody struggle raging on earth.

Coming from the wise statesman who, in a period so critical for humanity, is placed at the head of the great American Republic, this humanitarian effort, dictated by a spirit of high political sagacity and looking to an honorable peace for all, can not but contribute greatly toward hastening re-establishment of normal life and assuring through a stable state of international relations the evolution of humanity toward that progress wherein the United States of America always so largely shares.

[Here follows a recital of the trials Greece has suffered from the war.]

Such are the conditions in which your proposals find my country. This short and necessarily incomplete recital is not made with the purpose of criticism of the cruel blows at her sovereignty and neutrality from which Greece has been forced to suffer the effects. I have merely wished to show you, Mr. President, how much the soul of Greece at this moment longs for peace, and how much it appreciates your proposals, which constitute so important a step in the course of the bloody world tragedy of which we are witnesses.

CONSTANTINE.

Spanish Reply to President Wilson's Peace Note, December 30, 1916¹

His Majesty's Government has received through your embassy a copy of the note which the President of the United States has presented to the belligerent powers, expressing the desire that an early opportunity should be sought for obtaining from all the nations now at war a declaration as to their intentions so far as regards the bases upon which the conflict might be terminated. This copy is accompanied by another note, signed by yourself, and dated December 22, in which your embassy, in accordance with the instructions of your Government, says, in the name of the President, that the moment seems to be opportune for action on the part of his Majesty's Government, and that it should, if it thinks fit, support the attitude adopted by the Government of the United States.

With regard to the reasonable desire manifested by the latter Government to be supported in its proposition in favor of peace, the Gov-

¹*Current History*, New York, February, 1917, p. 792.

ernment of his Majesty, considering that the initiative has been taken by the President of the North American Republic, and that the diverse impressions which it has caused are already known, is of opinion that the action to which the United States invites Spain would not have efficacy, and the more so because the Central Empires have already expressed their firm intention to discuss the conditions of peace solely with the belligerent powers.

Fully appreciating that the noble desire of the President of the United States will always merit the gratitude of all nations, the Government of his Majesty is decided not to dissociate itself from any negotiation or agreement destined to facilitate the humanitarian work which will put an end to the present war, but it suspends its action, reserving it for the moment when the efforts of all those who desire peace will be more useful and efficacious than is now the case, if there should then be reasons to consider that its initiative or its intervention would be profitable.

Until that moment arrives the Government of his Majesty regards it as opportune to declare that in all that concerns an understanding between the neutral powers for the defense of their material interests affected by the war, it is disposed now, as it has been since the beginning of the present conflict, to enter into negotiations which may tend toward an agreement capable of uniting all the non-belligerent powers which may consider themselves injured or may regard it as necessary to remedy or diminish such injuries.

**Declaration of Premier Radoslavoff in the Bulgarian Sobranje,
December 30, 1916¹**

I can assure you that Bulgaria's work has been brought to a successful conclusion. To those who assert that we are asking too much I reply that we are no Chauvinists, but that we are aware of the aspirations of the Bulgarian people. You know from the Royal Manifesto issued when war was declared what Bulgarian aspirations are. I am not obliged to reply to each speaker individually.

[Dr. Radoslavoff declared that the peace proposals had been received with enthusiasm in neutral countries. Besides Switzerland and the Scandinavian countries, he understood that Holland and Spain were preparing to support the *démarche* of President Wilson. Bulgaria's

¹*The Times* - London, January 2, 1917.

alliance with the Central Empires and Turkey had not weakened. They were ready to conclude peace because they wished to see an end of war. They would make concessions in the name of humanity and for the welfare of all nations.]

Austro-Hungarian Reply to the Scandinavian Peace Note, January 1, 1917¹

The Austro-Hungarian Government is glad to state that its views in this matter agree with yours. It has sympathetically accepted President Wilson's suggestions, and therefore with satisfaction sees Sweden, Denmark, and Norway support President Wilson's initiative.

Statement of Emile Vandervelde, Belgian Minister of State, on the Peace Proposals²

From clandestine inquiries which I have been able to make among the popular leaders in the occupied part of Belgium since the publication of the German peace proposals I believe that the Belgian people are in complete accord with their Government in the attitude it has assumed towards the Chancellor's note. There must be no annexation if the peace following this war is to prevent other wars. That is one of the reasons why it would be futile even to comment upon the suggestion from German sources that the Germans are willing to abandon Belgium in exchange for the Belgian Congo.

There is no complaint of your President's action among the Belgian people. We believe that Mr. Wilson acted wholly in the spirit of humanitarianism, and that the steps he has taken will help rather than harm our cause. A comparison of the Allies' expression of views and our enemies' will suffice, I think, to convince the United States of the insincerity of Germany's attitude and the impossibility of discussing her present proposals.

It is very possible, however, that as her need for peace, which I believe to be very great, grows more pronounced, Germany will come

¹*The New York Times*, January 2, 1917. See footnote, *ante*, p. 33.

²*The Times*, London, January 9, 1917.

forward with more reasonable proposals. It would then become necessary for us to scrutinize such future offers as closely as we have those already formulated and declined.

The incredible, brutal slave traffic in which the Germans are now engaged in Belgium, against which your Government has raised its voice, has only served to increase my compatriots' horror of a peace imposed by Berlin.

Chinese Reply to President Wilson's Peace Note, January 9, 1917¹

Minister Reinsch to the Secretary of State

[TELEGRAM]

AMERICAN LEGATION,
Peking, January 9, 1917.

Minister for Foreign Affairs has written as follows in answer to my note transmitting the President's note to the belligerent powers:

"I have examined, with the care which the gravity of the questions raised demands, the note concerning peace which President Wilson has addressed to the Governments of the Allies and the Central Powers now at war and the text of which Your Excellency has been good enough to transmit to me under instructions of your Government.

"China, a nation traditionally pacific, has recently again manifested her sentiments in concluding treaties concerning the pacific settlement of international disputes, responding thus to the (. . .)² of the peace conferences held at The Hague.

"On the other hand the present war, by its prolongation, has seriously affected the interests of China more so perhaps than those of other powers which have remained neutral. She is at present at a time of reorganization which demands economically and industrially the cooperation of foreign countries, cooperation which a large number of them are unable to accord on account of the war in which they are engaged.

"In manifesting her sympathy for the spirit of the President's note, having in view the ending as soon as possible of the hostilities, China

¹Official print of the Department of State.

²Apparent omission.

is but acting in conformity with not only her interest but also with her profound sentiments.

"On account of the extent which modern wars are apt to assume and the repercussion which they bring about, their effects are no longer limited to belligerent states. All countries are interested in seeing wars becoming as rare as possible. Consequently China can not but show satisfaction with the views of the Government and people of the United States of America who declare themselves ready and even eager to cooperate when the war is over by all proper means to assure the respect of the principle of the equality of nations whatever their power may be and to relieve them of the peril of wrong and violence. China is ready to join her efforts with theirs for the attainment of such results which can only be obtained through the help of all."

REINSCH.

Entente Reply to President Wilson's Peace Note, January 10, 1917¹

Ambassador Sharp to the Secretary of State

[TELEGRAM]

AMERICAN EMBASSY,
Paris, January 10, 1917.

The following is the translation of the French note:

"The Allied Governments have received the note which was delivered to them in the name of the Government of the United States on the nineteenth of December, 1916. They have studied it with the care imposed upon them both by the exact realization which they have of the gravity of the hour and by the sincere friendship which attaches them to the American people.

"In general way they wish to declare that they pay tribute to the elevation of the sentiment with which the American note is inspired and that they associate themselves with all their hopes with the project for the creation of a league of nations to insure peace and justice throughout the world. They recognize all the advantages for the cause of humanity and civilization which the institution of international agreements, destined to avoid violent conflicts between nations would prevent; agreements which must imply the sanctions necessary to insure their execution and thus to prevent an apparent security from only facilitating new aggressions. But a discussion of future arrange-

¹Official print of the Department of State.

ments destined to insure an enduring peace presupposes a satisfactory settlement of the actual conflict; the Allies have as profound a desire as the Government of the United States to terminate as soon as possible a war for which the Central Empires are responsible and which inflicts such cruel sufferings upon humanity. But they believe that it is impossible at the present moment to attain a peace which will assure them reparation, restitution and such guarantees to which they are entitled by the aggression for which the responsibility rests with the Central Powers and of which the principle itself tended to ruin the security of Europe; a peace which would on the other hand permit the establishment of the future of European nations on a solid basis. The Allied nations are conscious that they are not fighting for selfish interests, but above all to safeguard the independence of peoples, of right and of humanity.

"The Allies are fully aware of the losses and suffering which the war causes to neutrals as well as to belligerents and they deplore them; but they do not hold themselves responsible for them, having in no way either willed or provoked this war, and they strive to reduce these damages in the measure compatible with the inexorable exigencies of their defense against the violence and the wiles of the enemy.

"It is with satisfaction therefore that they take note of the declaration that the American communication is in nowise associated in its origin with that of the Central Powers transmitted on the eighteenth of December by the Government of the United States. They did not doubt moreover the resolution of that Government to avoid even the appearance of a support, even moral, of the authors responsible for the war.

"The Allied Governments believe that they must protest in the most friendly but in the most specific manner against the assimilation established in the American note between the two groups of belligerents; this assimilation, based upon public declarations by the Central Powers, is in direct opposition to the evidence, both as regards responsibility for the past and as concerns guarantees for the future; President Wilson in mentioning it certainly had no intention of associating himself with it.

"If there is an historical fact established at the present date, it is the willful aggression of Germany and Austria-Hungary to insure their hegemony over Europe and their economic domination over the world. Germany proved by her declaration of war, by the immediate violation of Belgium and Luxembourg of conducting the war, her simulating con-

respect for small States; as the conflict developed the attitude of the Central Powers and their Allies has been a continual defiance of humanity and civilization. Is it necessary to recall the horrors which accompanied the invasion of Belgium and Servia, the atrocious *régime* imposed upon the invaded countries, the massacre of hundreds of thousands of inoffensive Armenians, the barbarities perpetrated against the populations of Syria, the raids of Zeppelins on open towns, the destruction by submarines of passenger steamers and of merchantmen even under neutral flags, the cruel treatment inflicted upon prisoners of war, the juridical murders of Miss Cavel, of Captain Fryatt, the deportation and the reduction to slavery of civil populations, *et cetera*? The execution of such a series of crimes perpetrated without any regard for universal reprobation fully explains to President Wilson the protest of the Allies.

"They consider that the note which they sent to the United States in reply to the German note will be a response to the questions put by the American Government, and according to the exact words of the latter, constitute 'a public declaration as to the conditions upon which the war could be terminated.'

"President Wilson desires more: he desires that the belligerent powers openly affirm the objects which they seek by continuing the war; the Allies experience no difficulty in replying to this request. Their objects in the war are well known; they have been formulated on many occasions by the chiefs of their divers Governments. Their objects in the war will not be made known in detail with all the equitable compensations and indemnities for damages suffered until the hour of negotiations. But the civilized world knows that they imply in all necessity and in the first instance the restoration of Belgium, of Servia, and of Montenegro and the indemnities which are due them; the evacuation of the invaded territories of France, of Russia and of Roumania with just reparation; the reorganization of Europe guaranteed by a stable *régime* and founded as much upon respect of nationalities and full security and liberty economic development, which all nations, great or small, possess, as upon territorial conventions and international agreements suitable to guarantee territorial and maritime frontiers against unjustified attacks; the restitution of provinces or territories wrested in the past from the Allies by force or against the will of their populations, the liberation of Italians, of Slavs, of Roumanians and of Tcheco Slovaques from foreign domination; the enfranchisement of populations subject to the bloody tyranny of the Turks; the expulsion from Europe of the Ottoman

Empire decidedly (. . .)¹ to western civilization. The intentions of His Majesty the Emperor of Russia regarding Poland have been clearly indicated in the proclamation which he has just addressed to his armies. It goes without saying that if the Allies wish to liberate Europe from the brutal covetousness of Prussian militarism, it never has been their design, as has been alleged, to encompass the extermination of the German peoples and their political disappearance. That which they desire above all is to insure a peace upon the principles of liberty and justice, upon the inviolable fidelity to international obligation with which the Government of the United States has never ceased to be inspired.

"United in the pursuits of this supreme object the Allies are determined, individually and collectively, to act with all their power and to consent to all sacrifices to bring to a victorious close a conflict upon which they are convinced not only their own safety and prosperity depends but also the future of civilization itself."

SHARP.

Belgian Note supplementary to the Entente Reply to President Wilson's Peace Note, January 10, 1917²

Ambassador Sharp to the Secretary of State

[TELEGRAM]

AMERICAN EMBASSY,
Paris, January 10, 1917.

Copy of Belgian note as follows:

"The Government of the King, which has associated itself with the answer handed by the President of the French Council to the American Ambassador on behalf of all, is particularly desirous of paying tribute to the sentiment of humanity which prompted the President of the United States to send his note to the belligerent powers and it highly esteems the friendship expressed for Belgium through his kindly intermediation. It desires as much as Mr. Woodrow Wilson to see the present war ended as early as possible.

"But the President seems to believe that the statesmen of the two opposing camps pursue the same objects of war. The example of Belgium unfortunately demonstrates that this is in no wise the fact.

¹Apparent omission.

²Official print of the Department of State.

Belgium has never, like the Central Powers, aimed at conquests. The barbarous fashion in which the German Government has treated, and is still treating, the Belgium nation, does not permit the supposition that Germany will preoccupy herself with guaranteeing in the future the rights of the weak nations which she has not ceased to trample under foot since the war, let loose by her, began to desolate Europe. On the other hand, the Government of the King has noted with pleasure and with confidence the assurances that the United States is impatient to cooperate in the measures which will be taken after the conclusion of peace, to protect and guarantee the small nations against violence and oppression.

"Previous to the German ultimatum, Belgium only aspired to live upon good terms with all her neighbors; she practiced with scrupulous loyalty towards each one of them the duties imposed by her neutrality. In the same manner she has been rewarded by Germany, for the confidence she placed in her, through which, from one day to the other, without any plausible reason, her neutrality was violated, and the Chancellor of the Empire when announcing to the Reichstag this violation of right and of treaties, was obliged to recognize the iniquity of such an act and predetermine that it would be repaired. But the Germans, after the occupation of Belgian territory, have displayed no better observance of the rules of international law or the stipulations of the Hague Convention. They have, by taxation, as heavy as it is arbitrary, drained the resources of the country; they have intentionally ruined its industries, destroyed whole cities, put to death and imprisoned a considerable number of inhabitants. Even now, while they are loudly proclaiming their desire to put an end to the horrors of war, they increase the rigors of the occupation by deporting into servitude Belgian workers by the thousands.

"If there is a country which has the right to say that it has taken up arms to defend its existence, it is assuredly Belgium. Compelled to fight or to submit to shame, she passionately desires that an end be brought to the unprecedented sufferings of her population. But she could only accept a peace which would assure her, as well as equitable reparation, security and guarantees for the future.

"The American people, since the beginning of the war, has manifested for the oppressed Belgian nation, its most ardent sympathy. It is an American committee, the Commission for Relief in Belgium which, in close union with the Government of the King and the National Committee, displays an untiring devotion and marvelous activity in re-victualling Belgium. The Government of the King is happy

to avail itself of this opportunity to express its profound gratitude to the Commission for Relief as well as to the generous Americans eager to relieve the misery of the Belgian population. Finally, nowhere more than in the United States have the abductions and deportations of Belgian civilians provoked such a spontaneous movement of protestation and indignant reproof.

"These facts, entirely to the honor of the American nation, allow the Government of the King to entertain the legitimate hope that at the time of the definitive settlement of this long war, the voice of the Entente Powers will find in the United States a unanimous echo to claim in favor of the Belgian nation, innocent victim of German ambition and covetousness, the rank and the place which its irreproachable past, the valor of its soldiers, its fidelity to honor and its remarkable faculties for work assign to it among the civilized nations."

SHARP.

German Note to Neutral Powers relative to the Entente Reply to the Peace Proposals, January 11, 1917¹

The Imperial Government is aware that the Government of the United States of America, the Royal Spanish Government, and the Swiss Government have received the reply of their enemies to the note of December 12, in which Germany, in concert with her allies, proposed to enter forthwith into peace negotiations. Our enemies rejected this proposal, arguing that it was a proposal without sincerity and without meaning. The form in which they couched their communication makes a reply to them impossible. But the German Government thinks it important to communicate to the neutral Powers its view of the state of affairs.

The Central Powers have no reason to enter again into a controversy regarding the origin of the world war. History will judge on whom the blame of the war falls. Its judgment will as little pass over the encircling policy of England, the *revanche* policy of France, and Russia's aspiration after Constantinople as over the provocation by Serbia, the Serajevo murders, and the complete Russian mobilization, which meant war on Germany.

Germany and her allies, who were obliged to take up arms to defend their freedom and their existence, regard this, which was

¹*The Times*, London, January 13, 1917.

their war aim, as attained. On the other hand, the enemy Powers have departed more and more from the realization of their plans, which, according to the statements of their responsible statesmen, are directed, among other things, toward the conquest of Alsace-Lorraine and several Prussian provinces, the humiliation and diminution of Austria-Hungary, the disintegration of Turkey, and the dismemberment of Bulgaria. In view of such war aims, the demand for reparation, restitution, and guarantees in the mouth of our enemies sounds strange.

Our enemies describe the peace offer of the four allied powers as a war manœuvre. Germany and her allies most emphatically protest against such a falsification of their motives, which they openly stated. Their conviction was that a just peace acceptable to all belligerents was possible, that it could be brought about, and that further bloodshed could not be justified. Their readiness to make known their peace conditions without reservation at the opening of negotiations disproves any doubt of their sincerity.

Our enemies, in whose power it was to examine the real value of our offer neither made any examination nor made counter-proposals. Instead of that, they declared that peace was impossible so long as the restoration of violated rights and liberties, the acknowledgment of the principle of nationalities, and the free existence of small States were not guaranteed. The sincerity which our enemies deny to the proposal of the four allied Powers can not be allowed by the world to these demands if it recalls the fate of the Irish people, the destruction of the freedom and independence of the Boer Republics, the subjection of Northern Africa by England, France and Italy, the suppression of foreign nationalities in Russia, and, finally, the oppression of Greece, which is unexampled in history.

Moreover, in regard to the alleged violation of international rights by the four allied Powers, those Powers which, from the beginning of the war, have trampled upon right and torn up the treaties on which it was based have no right to protest. Already in the first weeks of the war England had renounced the Declaration of London, the contents of which her own delegates had recognized as binding in international law, and in the further course of the war she most seriously violated the Declaration of Paris, so that, owing to arbitrary measures, a state of lawlessness began in the war at sea. The starvation campaign against Germany and the pressure on neutrals exercised in England's interest are no less grossly contrary to the rules of international law than to the laws of humanity.

Equally inconsistent with international law and the principles of civilization is the employment of coloured troops in Europe and the extension of the war to Africa, which has been brought about in violation of existing treaties. It undermines the reputation of the white race in this part of the globe. The inhumane treatment of the prisoners, especially in Africa and Russia, the deportation of the civil population from East Prussia, Alsace-Lorraine, Galicia, and the Bukovina are further proofs of our enemies' disregard for right and civilization.

At the end of their note of December 30, our enemies refer to the special position of Belgium. The Imperial Government is unable to admit that the Belgian Government has always observed its obligations. Already before the war Belgium was under the influence of England and leaned towards England and France, thereby herself violating the spirit of the treaties which guaranteed her independence and neutrality.

Twice the Imperial Government declared to the Belgian Government that it was not entering Belgium as an enemy, and entreated it to save the country from the horrors of war. In this case it offered Belgium a guarantee for the full integrity and independence of the kingdom and to pay for all the damage which might be caused by German troops marching through the country. It is known that in 1887 the Royal British Government was determined not to oppose on these conditions the claiming of a right of way through Belgium. The Belgian Government refused the repeated offer of the Imperial Government. On it and on those Powers who induced it to take up this attitude falls the responsibility for the fate which befell Belgium.

The accusation about German war methods in Belgium and the measures which were taken there in the interest of military safety have been repeatedly repudiated as untrue by the Imperial Government. It again emphatically protests against these calumnies.

Germany and her allies made an honest attempt to terminate the war and pave the way for an understanding among the belligerents. The Imperial Government declares that it solely depended on the decision of our enemies whether the road to peace should be taken or not. The enemy Governments have refused to take this road. On them falls the full responsibility for the continuation of bloodshed.

But the four allied Powers will prosecute the fight with calm trust and confidence in their good cause until a peace has been gained which guarantees to their own peoples honour, existence, freedom,

and development, and gives all the Powers of the European Continent the benefit of working united in mutual esteem at the solution of the great problems of civilization.

Extracts from the Austro-Hungarian Note to Neutral Powers relative to the Entente Reply to the Peace Proposals, January 11, 1917¹

In the years preceding the Austro-Hungarian ultimatum to Serbia the Monarchy displayed sufficient proof of its forbearance toward the ever-increasing hostility; aggressive intentions, and intrigues of Serbia until the moment when finally the notorious murders at Serajevo made further indulgence impossible.

The question as to on which side the military situation is the stronger appears idle, and may confidently be left to the judgment of the world. The four allied powers now look on their purely defensive war aims as attained, while their enemies travel further and further from the realization of their plans.

For the enemy to characterize our peace proposals as meaningless before peace negotiations were begun, and so long as, therefore, our peace conditions are unknown, is merely to make an arbitrary assertion. We had made full preparations for the acceptance of our offer to make known our peace conditions on entering into the negotiations. We declared ourselves ready to end the war by a verbal exchange of views with the enemy Governments, and it depended solely on our enemies' decision whether peace were brought about or not.

Before God and mankind we repudiate responsibility for continuance of the war.

Premier Lloyd George's Guildhall Address, January 11, 1917²

The Chancellor of the Exchequer, in his extremely lucid and impressive speech, has placed before you the business side of his proposal, and I think you will agree with me, after his explanation of his scheme, that he has offered for subscription a Loan which contains all the essential ingredients of an attractive investment. They are the most

¹*The New York Times*, January 13, 1917.

²*The Times*, London, January 12, 1917.

generous terms the Government could offer without injury to the taxpayer. I agree that the Chancellor of the Exchequer, was right in offering such liberal terms, because it is important that we should secure a big loan now—not merely in order to enable us to finance the war effectively, but as a demonstration of the continued resolve of this country to prosecute it. And it is upon that aspect of the question that I should like to say a few words.

The German Kaiser a few days ago sent a message to his people that the Allies had rejected his peace offer. He did so in order to drug those whom he can no longer dragoon. Where are those offers? We have asked for them. We have never seen them. We were not offered terms; we were offered a trap baited with fair words. They tempted us once, but the Lion has his eyes open now. We have rejected no terms that we have ever seen. Of course, it would suit them to have peace at the present moment on their own terms. We all want peace; but when we get it, it must be a real peace. The Allied Powers separately, and in council together, have come to the same conclusion. Knowing well what war means, knowing especially what this war means in suffering, in burdens, in horror, they have decided that even war is better than peace—peace at the Prussian price of domination over Europe. We made that clear in our reply to Germany; we made it still clearer in our reply to the United States of America. Before we attempt to rebuild the temple of peace we must see now that the foundations are solid. They were built before upon the shifting sands of Prussian faith; henceforth, when the time for rebuilding comes, it must be on the rock of vindicated justice.

I have just returned from a council of war of the four great Allied countries upon whose shoulders most of the burden of this terrible war falls. I can not give you the conclusions: there might be useful information in them for the enemy. There were no delusions as to the magnitude of our task; neither were there any doubts about the result. I think I could say what was the feeling of every man there. It was one of the most business-like conferences that I ever attended. We faced the whole situation, probed it thoroughly, looked the difficulties in the face, and made arrangements to deal with them—and we separated more confident than ever. All felt that if victory were difficult, defeat was impossible. There was no flinching, no wavering, no faint-heartedness, no infirmity of purpose. There was a grim resolution at all costs that we must achieve the high aim with which we accepted the challenge of the Prussian military caste

and rid Europe and the world for ever of its menace. No country could have refused that challenge without loss of honour. No one could have rejected it without impairing national security. No one could have failed to take it up without forfeiting something which is of greater value to every free and self-respecting people than life itself.

These nations did not enter into the war light-heartedly. They did not embark upon this enterprise without knowing what it really meant. They were not induced by the prospect of an easy victory. Take this country. The millions of our men who enrolled in the Army enlisted after the German victories of August, 1914—when they knew the accumulative and concentrated power of the German military machine. That is when they placed their lives at the disposal of their country. What about other nations? They knew what they were encountering, that they were fighting an organization which had been perfected for generations by the best brains of Prussia, perfected with one purpose—the subjugation of Europe. And yet they faced it. Why did they do it? I passed through hundreds of miles of the beautiful lands of France and of Italy, and as I did so I asked myself this question, Why did the peasants leave by the million these sunny vineyards and cornfields in France—why did they quit these enchanting valleys, with their comfort, and their security, their calm in Italy—in order to face the dreary and wild horrors of the battlefield? They did it for one purpose and one purpose only. They were not driven to the slaughter by kings. These are great democratic countries. No Government could have lasted twenty-four hours that had forced them into an abhorrent war. Of their own free will they embarked upon it, because they knew a fundamental issue had been raised which no country could have shirked without imperilling all that has been won in the centuries of the past and all that remains to be won in the ages of the future.

That is why, as the war proceeds, and the German purpose becomes more manifest, the conviction has become deeper in the minds of these people that they must break their way through to victory in order to save Europe from unspeakable 'despotism. That was the spirit which animated the Allied Conference at Rome last week.

But I will tell you one thing that struck me, and strikes me more and more each time that I visit the Continent and attend these conferences. That is the increasing extent to which the Allied peoples are looking to Great Britain. They are trusting to her rugged strength, to her great resources, more and more. To them she

looks like a great tower in the deep. She is becoming more and more the hope of the oppressed and the despair of the oppressor, and I feel more and more confident that we shall not fail the people who put their trust in us. When that arrogant Prussian caste flung the signature of Britain to a treaty into the waste-paper basket as if it were of no account, they knew not the pride of the land they were treating with such insolent disdain. They know it now. Our soldiers and sailors have taught them to respect it.

You have heard the eloquent account of the Chancellor of the Exchequer of the achievements of our soldiers. Our sailors are gallantly defending the honour of our country on the high seas of the world. They have strangled the enemy's commerce, and will continue to do so, in spite of all the piratical devices of the foe. In 1914 and 1915, for two years, a small, ill-equipped Army held up the veterans of Prussia with the best equipment in Europe. In 1916 they hurled them back, and delivered a blow from which they are reeling. In 1917 the Armies of Britain will be more formidable than ever in training, in efficiency, and in equipment, and you may depend upon it that if we give them the necessary support they will cleave a road to victory through all the dangers and perils of the next few months.

But we must support them. They are worth it. Have you ever talked to a soldier who has come back from the front? There is not one of them who will not tell you how he is encouraged and sustained by hearing the roar of the guns behind him. This is what I want to see: I want to see cheques hurtling through the air, fired from the city of London, from every city, town, village, and hamlet throughout the land, fired straight into the intrenchments of the enemy. Every well-directed cheque, well loaded, properly primed, is a more formidable weapon of destruction than a 12-in. shell. It clears the path of the barbed wire entanglements for our gallant fellows to march through. A big loan helps to ensure victory. A big loan will also shorten the war. It will help to save life; it will help to save the British Empire; it will help to save Europe; it will help to save civilization. That is why we want the country to rise to this occasion, and show that the old spirit of Britain, represented by this great British meeting, is still as alive and as alert and as potent as ever.

I want to appeal to the men at home, and to the women also. They have done their part nobly. A man who has been Munitions Minister for twelve months must feel a debt of gratitude to the women

for what they have done. They have helped to win, and without them we could not have done it. I want to make a special appeal, or, rather, to enforce the special appeal of the Chancellor of the Exchequer. Let no money be squandered in luxury and indulgence which can be put into the fight—and it can, every penny of it. Every ounce counts in this fight. Do not waste it. Do not throw it away. Put it there to help the valour of our brave young boys. Back them up. Let us contribute to assist them. Have greater pride in them than in costlier garments. They will feel prouder of their mothers to-day, and their pride in them will grow in years to come when the best garments will have rotted. It will glisten and glitter. It will improve with the years. They can put it on with old age and say, "This is something I contributed in the Great War," and they will be proud of it.

Men and women of England, Scotland, Wales and Ireland, the first charge—the first charge—upon all your surplus money over your needs for yourselves and your children should be to help those gallant young men of ours who have tendered their lives for the cause of humanity. The more we get the surer the victory. The more we get the shorter the war. The more we get the less it will cost in treasure, and the greatest treasure of all, brave blood. The more we give the more will the nation gain. You will enrich it by your contributions—by your sacrifices. Extravagance—I want to bring this home to every man and woman throughout these Islands—extravagance during the war costs blood—costs blood. And what blood? Valiant blood—the blood of heroes. It would be worth millions to save one of them. A big loan will save myriads of them; help them not merely to win; help them to come home to shout for the victory which they have won. It means better equipment for our troops. It means better equipment for the Allies as well, and this—and I say it now for the fiftieth, if not for the hundredth time—is a war of equipment. That is why we are appealing for your subscriptions. We can do that. Most of us could not do more. But what we can do it is our duty, it is our pride to do.

I said it was a war of equipment. Why are the Germans pressing back our gallant Allies in Roumania? It is not that they are better fighters. They are certainly not. The Roumanian peasant has proved himself to be one of the doughtiest fighters in the field when he has a chance, poor fellow, and he never had much. As for the Russian, the way in which with bare breast he has fought for two years and a half, with inferior guns, insufficient rifles, inadequate sup-

plies of ammunition, is one of the world's tales of heroism. Let us help to equip them, and there will be another story to tell soon.

That is why I am glad to follow the Chancellor of the Exchequer in the appeal which he has made to the patriotism of our race. But with true Scottish instincts he put the appeal to produce first. He laid it down as a good foundation for patriotism and reserved that for his peroration. I shall reverse the order, belonging to a less canny race. I want to say it is a good investment. After all, the old country is the best investment in the world. It was a sound concern before the war; it will be sounder and safer than ever after the war, and especially safer. I do not know the nation that will care to touch it after the war. They had forgotten what we were like in those days; it will take them a long time to forget this lesson. It will be a safer investment than ever and a sounder one.

Have you been watching what has been going on? Before the war we had a good many shortcomings in our business, our commerce and our industry. The war is setting them all right in the most marvelous way. You ask great business men like my friend Lord Pirrie, whom I see there in the corner, what is going on in the factories throughout Great Britain and Ireland. Old machinery scrapped, the newest and the best set up; slipshod, wasteful methods also scrapped, hampering customs discontinued; millions brought into the labour market to help to produce who before were merely consumers. I do not know what the National Debt will be at the end of this war but I will make this prediction. Whatever it is, what is added in real assets to the real riches of the nation will be infinitely greater than any debt that we shall ever acquire. The resources of the nation in every direction developed, directed, perfected, the nation itself disciplined, braced up, quickened, we have become a more alert people. We have thrown off useless tissues. We are a nation that has been taking exercise. We are a different people.

I will tell you another difference. The Prussian menace was a running mortgage which detracted from the value of our national security. Nobody knew what it meant. We know pretty well now. You could not tell whether it meant a mortgage of hundreds of millions, or thousands of millions, and I know you could not tell it would not mean ruin. That mortgage will be cleared off forever and there will be a better security, a better, sounder, safer security, at a better rate of interest. The world will then be able, when the war is over, to attend to its business. There will be no war or rumours of war to disturb and to distract it. We can build up;

we can reconstruct; we can till and cultivate and enrich; and the burden and terror and waste of war will have gone. The best security for peace will be that nations will band themselves together to punish the first peace-breaker. In the armouries of Europe every weapon will be a sword of justice. In the government of men every army will be the constabulary of peace.

There were men who hoped to see this achieved in the ways of peace. We were disappointed. It was ordained that we should not reach that golden era except along a path which itself was paved with gold, yea, and cemented with valiant blood. There are myriads who have given the latter, and there are myriads more ready for the sacrifice if their country needs it. It is for us to contribute the former. Let no man and no woman, in this crisis of their nation's fate, through indolence, greed, avarice, or selfishness, fail. And if they do their part, then, when the time comes for the triumphal march through the darkness and the terror of night into the bright dawn of the morning of the new age, they will each feel that they have their share in it.

British Note of January 13, 1917, amplifying the Entente Reply to President Wilson's Peace Note¹

In sending you a translation of the Allied note I desire to make the following observations, which you should bring to the notice of the United States Government.

I gather from the general tenour of the President's note that, while he is animated by an intense desire that peace should come soon and that when it comes it should be lasting, he does not, for the moment at least, concern himself with the terms on which it should be arranged. His Majesty's Government entirely share the President's ideals; but they feel strongly that the durability of the peace must largely depend on its character and that no stable system of international relations can be built on foundations which are essentially and hopelessly defective.

This becomes clearly apparent if we consider the main conditions which rendered possible the calamities from which the world is now suffering. These were the existence of a Great Power consumed with the lust of domination in the midst of a community of nations ill-

¹*The Times*, London, January 18, 1917.

prepared for defence, plentifully supplied, indeed, with international laws, but with no machinery for enforcing them, and weakened by the fact that neither the boundaries of the various States nor their internal constitution harmonized with the aspirations of their constituent races or secured to them just and equal treatment.

That this last evil would be greatly mitigated if the Allies secured the changes in the map of Europe outlined in their joint note is manifest, and I need not labour the point.

It has been argued, indeed, that the expulsion of the Turks from Europe forms no proper or logical part of this general scheme. The maintenance of the Turkish Empire was, during many generations, regarded by statesmen of world-wide authority as essential to the maintenance of European peace. Why, it is asked, should the cause of peace be now associated with a complete reversal of this traditional policy?

The answer is that circumstances have completely changed. It is unnecessary to consider now whether the creation of a reformed Turkey, mediating between hostile races in the Near East, was a scheme which, had the Sultan been sincere and the Powers united, could ever have been realized. It certainly can not be realized now. The Turkey of "Union and Progress" is at least as barbarous and is far more aggressive than the Turkey of Sultan Abdul Hamid. In the hands of Germany it has ceased even in appearance to be a bulwark of peace, and is openly used as an instrument of conquest. Under German officers Turkish soldiers are now fighting in lands from which they had long been expelled, and a Turkish Government controlled, subsidized, and supported by Germany has been guilty of massacres in Armenia and Syria more horrible than any recorded in the history even of those unhappy countries. Evidently the interests of peace and the claims of nationality alike require that Turkish rule over alien races shall, if possible, be brought to an end; and we may hope that the expulsion of Turkey from Europe will contribute as much to the cause of peace as the restoration of Alsace-Lorraine to France, of Italia Irredenta to Italy, or any of the other territorial changes indicated in the Allied note.

Evidently, however, such territorial rearrangements, though they may diminish the occasions of war, provide no sufficient security against its recurrence. If Germany, or rather, those in Germany who mold its opinions and control its destinies, again set out to dominate the world, they may find that by the new order of things the adventure is made more difficult, but hardly that it is made impossible. They

may still have ready to their hand a political system organized through and through on a military basis; they may still accumulate vast stores of military equipment; they may still perfect their methods of attack, so that their more pacific neighbours will be struck down before they can prepare themselves for defence. If so, Europe, when the war is over, will be far poorer in men, in money, and in mutual goodwill than it was when the war began, but it will not be safer; and the hopes for the future of the world entertained by the President will be as far as ever from fulfilment.

There are those who think that for this disease international treaties and international laws may provide a sufficient cure. But such persons have ill learned the lessons so clearly taught by recent history. While other nations, notably the United States of America and Britain, were striving by treaties of arbitration to make sure that no chance quarrel should mar the peace they desired to make perpetual, Germany stood aloof. Her historians and philosophers preached the splendors of war; Power was proclaimed as the true end of the State; the General Staff forged with untiring industry the weapons by which at the appointed moment Power might be achieved. These facts proved clearly enough that treaty arrangements for maintaining peace were not likely to find much favour at Berlin; they did not prove that such treaties, once made, would be utterly ineffectual. This became evident only when war had broken out; though the demonstration, when it came, was overwhelming. So long as Germany remains the Germany which, without a shadow of justification, over-ran and barbarously ill-treated a country it was pledged to defend, no State can regard its rights as secure if they have no better protection than a solemn treaty.

The case is made worse by the reflection that these methods of calculated brutality were designed by the Central Powers, not merely to crush to the dust those with whom they were at war, but to intimidate those with whom they were still at peace. Belgium was not only a victim—it was an example. Neutrals were intended to note the outrages which accompanied its conquest, the reign of terror which followed on its occupation, the deportation of a portion of its population, the cruel oppression of the remainder. And, lest the nations happily protected, either by British fleets or by their own, from German armies should suppose themselves safe from German methods, the submarine has (within its limits) assiduously imitated the barbarous practices of the sister service. The War Staffs of the Central Powers are well content to horrify the world if at the same time they can terrorize it.

If, then, the Central Powers succeed, it will be to methods like these that they will owe their success. How can any reform of international relations be based on a peace thus obtained? Such a peace would represent the triumph of all the forces which make war certain and make it brutal. It would advertise the futility of all the methods on which civilization relies to eliminate the occasions of international dispute and to mitigate their ferocity.

Germany and Austria made the present war inevitable by attacking the rights of one small State, and they gained their initial triumphs by violating the treaty-guarded territories of another. Are small States going to find in them their protectors or in treaties made by them a bulwark against aggression? Terrorism by land and sea will have proved itself the instrument of victory. Are the victors likely to abandon it on the appeal of neutrals? If existing treaties are no more than scraps of paper, can fresh treaties help us? If the violations of the most fundamental canons of international law be crowned with success, will it not be in vain that the assembled nations labour to improve their code? None will profit by their rules but the criminals who break them. It is those who keep them that will suffer.

Though, therefore, the people of this country share to the full the desire of the President for peace, they do not believe that peace can be durable if it be not based on the success of the Allied cause. For a durable peace can hardly be expected unless three conditions are fulfilled. The first is that the existing causes of international unrest should be as far as possible removed or weakened. The second is that the aggressive aims and the unscrupulous methods of the Central Powers should fall into disrepute among their own peoples. The third is that behind international law and behind all treaty arrangements for preventing or limiting hostilities some form of international sanction should be devised which would give pause to the hardest aggressor. These conditions may be difficult of fulfilment. But we believe them to be in general harmony with the President's ideals, and we are confident that none of them can be satisfied, even imperfectly, unless peace be secured on the general lines indicated (so far as Europe is concerned) in the joint note. Therefore it is that this country has made, is making, and is prepared to make sacrifices of blood and treasure unparalleled in its history. It bears these heavy burdens, not merely that it may thus fulfil its treaty obligations, nor yet that it may secure a barren triumph of one group of nations over another. It bears them because it firmly believes that on the success of the Allies depend

the prospects of peaceful civilization and of those international reforms which the best thinkers of the New World, as of the Old, dare to hope may follow on the cessation of our present calamities.

I am, with great truth and respect, Sir, your Excellency's most obedient, humble servant,

ARTHUR JAMES BALFOUR.

Kaiser Wilhelm's Proclamation to the German People, January 13, 1917¹

Our enemies have dropped the mask. After refusing with scorn and hypocritical words of love for peace and humanity our honest peace offer, they now, in their reply to the United States, have gone beyond that and admitted their lust for conquest, the baseness of which is further enhanced by their calumnious assertions. Their aim is the crushing of Germany, the dismemberment of the Powers allied with us, and the enslavement of the freedom of Europe and the seas, under the same yoke that Greece, with gnashing of teeth, is now enduring. But what they, in thirty months of the bloodiest fighting and unscrupulous economic war could not achieve, they will also in all the future not accomplish.

Our glorious victories and our iron strength of will, with which our fighting people at the front and at home have borne all hardships and distress, guarantee that also in the future our beloved Fatherland has nothing to fear. Burning indignation and holy wrath will redouble the strength of every German man and woman, whether it is devoted to fighting, work, or suffering. We are ready for all sacrifices. The God who planted His glorious spirit of freedom in our brave people's heart will also give us and our loyal Allies, tested in battle, full victory over all the enemy lust for power and rage for destruction.

WILHELM, I. R.

Statement of Francesco Ruffini, Italian Minister of Public Instruction, Rome, January 14, 1917²

In the note of the Allies to President Wilson, they make a point which is understandable to neutrals, and particularly to America. Italy,

¹*The Times*, London, January 15, 1917.

²*The New York Times*, January 16, 1917.

no less than her allies, awaits with calm confidence the realization of the aims set forth in that passage of the note which refers to the redemption of Italians subject to Austria. The German press seeks to depict Italy as desirous of conquests, but American public opinion, so far-seeing, so well educated to freedom and to a deep spirit of national unity, can not confound brutal lust of conquest with a justified claim to territories with populations like those of the Trentino, Istria and Dalmatia.

These territories have had only one civilization in their history, that of Italy, and only one great humiliation—which must cease—that of foreign domination which attempted to destroy the principle of nationality. America knows well that Italy, notwithstanding these just claims, abstained from any provocation before the European conflagration, being occupied only with her peaceful development. Austria was responsible for the outbreak of the conflict, having willed war with Serbia after provoking Italy one hundred times with violent persecution of Italians of Trent, Trieste, Fiume and Zara, whom she denied even the right to educate themselves in their own language.

Once the conflagration was ignited, Italy felt that fate called her to complete her national unity and resume her just and holy work and her wars of independence, which have been studied with such enthusiasm by your illustrious American historians. Only those who are ignorant of the history of Austria's violent usurpations were surprised by Italy's action, initiated by her victorious armies, or considered her just claims to be ambition for conquest. Italy faced the terrible sacrifices of blood and riches imposed by the war with that same religious spirit which animated all the deeds of her national resurrection, of which America's attainment of independence was so full.

Italy counts on the considered and tranquil judgment of American public opinion which, while justly desiring the return of peace, can not, if it examines the origin of the conflict and the problem raised thereby, wish that the European equilibrium, broken by violence in 1914, be replaced to-day by a premature and unfruitful peace containing the germs of graver conflicts in the future.

Persian Reply to President Wilson's Peace Note, January 15, 1917¹

His Imperial Majesty's Government has instructed me to communicate to your Excellency that it experienced the utmost pleasure upon

¹*The New York Times*, January 16, 1917.

receipt of the President's note of December 18, 1916, regarding peace terms transmitted through the United States plenipotentiary at Teheran, and to express to you the hope that a step so benevolent and humane will meet with the success it deserves.

I am further instructed to say that, notwithstanding we declared ourselves neutral, a large part of our country has been disturbed and devastated by the fighting of the belligerents within our boundaries. In view of this fact you can not doubt that we heartily welcome and indorse the move the President has made.

Furthermore, inasmuch as His Majesty's Government understands from the President's note that he desires the preservation of the integrity and freedom of the powers and the weaker nations, and in view of the firm friendship which has always existed between our two countries, it ardently hopes that the Government of the United States will assist our oppressed nation to maintain its integrity and rights, not only for the present, but whenever a peace conference shall take place.

**Extract from the Reply of the Greek Government to President
Wilson's Peace Note, January 16, 1917¹**

The Royal Government learns with the most lively interest of the steps which the President of the United States of America has just undertaken among the belligerents for the cessation of a long and cruel war which is ravishing humanity. Very sensitive to the communication made to it, the Royal Government deeply appreciates the generous courage as well as the extremely humanitarian and profoundly politic spirit which dictated that suggestion. The considerations given in it to the subject of the sufferings of neutral nations as a result of the colossal struggle, as well as guarantees which will be equally desired by both belligerent factions for the rights and privileges of all States, have particularly found a sympathetic echo in the soul of Greece. In fact, there is no country which, like Greece, has had to suffer from this war, while at the same time remaining a stranger to it.

Through circumstances exceptionally tragic, she has less than other neutral countries been able to escape a direct and pernicious effect from the hostilities between the belligerents. Her geographical posi-

¹*The New York Times*, January 17, 1917. For the reply of King Constantine, see *ante*, p. 42.

tion contributed toward diminishing her power of resistance against violations of her neutrality and sovereignty, which she has been forced to submit to in the interest of self-preservation.

The Royal Government would certainly have made all haste to accede to the noble demand of the President of the United States of America, to help with all means in its power until success were achieved, if it were not entirely out of communication with one of the two belligerents, while toward the other it must await the solution of difficulties which seriously weigh upon the situation in Greece. But the Royal Government is following with all the intensity of its soul the precious effort of the President of the United States of America, hoping to see it completed at the earliest possible moment.

President Wilson's Address to the Senate, January 22, 1917¹

Mr. President and gentlemen of the Senate: On the eighteenth of December last I addressed an identic note to the governments of the nations now at war requesting them to state, more definitely than they had yet been stated by either group of belligerents, the terms upon which they would deem it possible to make peace. I spoke on behalf of humanity and of the rights of all neutral nations like our own, many of whose most vital interests the war puts in constant jeopardy. The Central Powers united in a reply which stated merely that they were ready to meet their antagonists in conference to discuss terms of peace. The Entente Powers have replied much more definitely and have stated, in general terms, indeed, but with sufficient definiteness to imply details, the arrangements, guarantees, and acts of reparation which they deem to be the indispensable conditions of a satisfactory settlement. We are that much nearer a definite discussion of the peace which shall end the present war. We are that much nearer the discussion of the international concert which must thereafter hold the world at peace. In every discussion of the peace that must end this war it is taken for granted that that peace must be followed by some definite concert of power which will make it virtually impossible that any such catastrophe should ever overwhelm us again. Every lover of mankind, every sane and thoughtful man must take that for granted.

I have sought this opportunity to address you because I thought that I owed it to you, as the council associated with me in the final determination of our international obligations, to disclose to you without reserve the thought and purpose that have been taking form in

¹*Congressional Record*, January 22, 1917, p. 1947.

my mind in regard to the duty of our Government in the days to come when it will be necessary to lay afresh and upon a new plan the foundations of peace among the nations.

It is inconceivable that the people of the United States should play no part in that great enterprise. To take part in such a service will be the opportunity for which they have sought to prepare themselves by the very principles and purposes of their polity and the approved practices of their Government ever since the days when they set up a new nation in the high and honorable hope that it might in all that it was and did show mankind the way to liberty. They can not in honor withhold the service to which they are now about to be challenged. They do not wish to withhold it. But they owe it to themselves and to the other nations of the world to state the conditions under which they will feel free to render it.

That service is nothing less than this, to add their authority and their power to the authority and force of other nations to guarantee peace and justice throughout the world. Such a settlement can not now be long postponed. It is right that before it comes this Government should frankly formulate the conditions upon which it would feel justified in asking our people to approve its formal and solemn adherence to a League for Peace. I am here to attempt to state those conditions.

The present war must first be ended; but we owe it to candor and to a just regard for the opinion of mankind to say that, so far as our participation in guarantees of future peace is concerned, it makes a great deal of difference in what way and upon what terms it is ended. The treaties and agreements which bring it to an end must embody terms which will create a peace that is worth guaranteeing and preserving, a peace that will win the approval of mankind, not merely a peace that will serve the several interests and immediate aims of the nations engaged. We shall have no voice in determining what those terms shall be, but we shall, I feel sure, have a voice in determining whether they shall be made lasting or not by the guarantees of a universal covenant; and our judgment upon what is fundamental and essential as a condition precedent to permanency should be spoken now, not afterwards when it may be too late.

No covenant of cooperative peace that does not include the peoples of the New World can suffice to keep the future safe against war; and yet there is only one sort of peace that the peoples of America could join in guaranteeing. The elements of that peace must be elements that engage the confidence and satisfy the principles of the

American governments, elements consistent with their political faith and the practical convictions which the peoples of America have once for all embraced and undertaken to defend.

I do not mean to say that any American government would throw any obstacle in the way of any terms of peace the governments now at war might agree upon, or seek to upset them when made, whatever they might be. I only take it for granted that mere terms of peace between the belligerents will not satisfy even the belligerents themselves. Mere agreements may not make peace secure. It will be absolutely necessary that a force be created as a guarantor of the permanency of the settlement so much greater than the force of any nation now engaged or any alliance hitherto formed or projected that no nation, no probable combination of nations could face or withstand it. If the peace presently to be made is to endure, it must be a peace made secure by the organized major force of mankind.

The terms of the immediate peace agreed upon will determine whether it is a peace for which such a guarantee can be secured. The question upon which the whole future peace and policy of the world depends is this: Is the present war a struggle for a just and secure peace, or only for a new balance of power? If it be only a struggle for a new balance of power, who will guarantee, who can guarantee, the stable equilibrium of the new arrangement? Only a tranquil Europe can be a stable Europe. There must be, not a balance of power, but a community of power; not organized rivalries, but an organized common peace.

Fortunately we have received very explicit assurances on this point. The statesmen of both of the groups of nations now arrayed against one another have said, in terms that could not be misinterpreted, that it was no part of the purpose they had in mind to crush their antagonists. But the implications of these assurances may not be equally clear to all,—may not be the same on both sides of the water. I think it will be serviceable if I attempt to set forth what we understand them to be.

They imply, first of all, that it must be a peace without victory. It is not pleasant to say this. I beg that I may be permitted to put my own interpretation upon it and that it may be understood that no other interpretation was in my thought. I am seeking only to face realities and to face them without soft concealments. Victory would mean peace forced upon the loser, a victor's terms imposed upon the vanquished. It would be accepted in humiliation, under duress, at an intolerable sacrifice, and would leave a sting, a resentment, a bitter

memory upon which terms of peace would rest, not permanently, but only as upon quicksand. Only a peace between equals can last. Only a peace the very principle of which is equality and a common participation in a common benefit. The right state of mind, the right feeling between nations, is as necessary for a lasting peace as is the just settlement of vexed questions of territory or of racial and national allegiance.

The equality of nations upon which peace must be founded if it is to last must be an equality of rights; the guarantees exchanged must neither recognize nor imply a difference between big nations and small, between those that are powerful and those that are weak. Right must be based upon the common strength, not upon the individual strength, of the nations upon whose concert peace will depend. Equality of territory or of resources there of course can not be; nor any other sort of equality not gained in the ordinary peaceful and legitimate development of the peoples themselves. But no one asks or expects anything more than an equality of rights. Mankind is looking now for freedom of life, not for equipoises of power.

And there is a deeper thing involved than even equality of right among organized nations. No peace can last, or ought to last, which does not recognize and accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property. I take it for granted, for instance, if I may venture upon a single example, that statesmen everywhere are agreed that there should be a united, independent, and autonomous Poland, and that henceforth inviolable security of life, of worship, and of industrial and social development should be guaranteed to all peoples who have lived hitherto under the power of governments devoted to a faith and purpose hostile to their own.

I speak of this, not because of any desire to exalt an abstract political principle which has always been held very dear by those who have sought to build up liberty in America, but for the same reason that I have spoken of the other conditions of peace which seem to me clearly indispensable,—because I wish frankly to uncover realities. Any peace which does not recognize and accept this principle will inevitably be upset. It will not rest upon the affections or the convictions of mankind. The ferment of spirit of whole populations will fight subtly and constantly against it, and all the world will sympathize. The world can be at peace only if its life is stable, and there can be no stability where the will is in rebellion, where there is not tranquillity of spirit and a sense of justice, of freedom, and of right.

So far as practicable, moreover, every great people now struggling towards a full development of its resources and of its powers should be assured a direct outlet to the great highways of the sea. Where this can not be done by the cession of territory, it can no doubt be done by the neutralization of direct rights of way under the general guarantee which will assure the peace itself. With a right comity of arrangement no nation need be shut away from free access to the open paths of the world's commerce.

And the paths of the sea must alike in law and in fact be free. The freedom of the seas is the *sine qua non* of peace, equality, and cooperation. No doubt a somewhat radical reconsideration of many of the rules of international practice hitherto thought to be established may be necessary in order to make the seas indeed free and common in practically all circumstances for the use of mankind, but the motive for such changes is convincing and compelling. There can be no trust or intimacy between the peoples of the world without them. The free, constant, unthreatened intercourse of nations is an essential part of the process of peace and of development. It need not be difficult either to define or to secure the freedom of the seas if the governments of the world sincerely desire to come to an agreement concerning it.

It is a problem closely connected with the limitation of naval armaments opens the wider and perhaps more difficult question of the seas at once free and safe. And the question of limiting naval armaments opens the wider and perhaps more difficult question of the limitation of armies and of all programs of military preparation. Difficult and delicate as these questions are, they must be faced with the utmost candor and decided in a spirit of real accommodation if peace is to come with healing in its wings, and come to stay. Peace can not be had without concession and sacrifice. There can be no sense of safety and equality among the nations if great preponderating armaments are henceforth to continue here and there to be built up and maintained. The statesmen of the world must plan for peace and nations must adjust and accommodate their policy to it as they have planned for war and made ready for pitiless contest and rivalry. The question of armaments, whether on land or sea, is the most immediately and intensely practical question connected with the future fortunes of nations and of mankind.

I have spoken upon these great matters without reserve and with the utmost explicitness because it has seemed to me to be necessary if the world's yearning desire for peace was anywhere to find free

voice and utterance. Perhaps I am the only person in high authority amongst all the peoples of the world who is at liberty to speak and hold nothing back. I am speaking as an individual, and yet I am speaking also, of course, as the responsible head of a great government, and I feel confident that I have said what the people of the United States would wish me to say. May I not add that I hope and believe that I am in effect speaking for liberals and friends of humanity in every nation and of every program of liberty? I would fain believe that I am speaking for the silent mass of mankind everywhere who have as yet had no place or opportunity to speak their real hearts out concerning the death and ruin they see to have come already upon the persons and the homes they hold most dear.

And in holding out the expectation that the people and Government of the United States will join the other civilized nations of the world in guaranteeing the permanence of peace upon such terms as I have named, I speak with the greater boldness and confidence because it is clear to every man who can think that there is in this promise no breach in either our traditions or our policy as a nation, but a fulfilment, rather, of all that we have professed or striven for.

I am proposing, as it were, that the nations should with one accord adopt the doctrine of President Monroe as the doctrine of the world: that no nation should seek to extend its polity over any other nation or people, but that every people should be left free to determine its own polity, its own way of development, unhindered, unthreatened, unafraid, the little along with the great and powerful.

I am proposing that all nations henceforth avoid entangling alliances which would draw them into competitions of power, catch them in a net of intrigue and selfish rivalry, and disturb their own affairs with influences intruded from without. There is no entangling alliance in a concert of power. When all unite to act in the same sense and with the same purpose all act in the common interest and are free to live their own lives under a common protection.

I am proposing government by the consent of the governed; that freedom of the seas which in international conference after conference representatives of the United States have urged with the eloquence of those who are the convinced disciples of liberty; and that moderation of armaments which makes of armies and navies a power for order merely, not an instrument of aggression or of selfish violence.

These are American principles, American policies. We could stand for no others. And they are also the principles and policies of forward

looking men and women everywhere, of every modern nation, of every enlightened community. They are the principles of mankind and must prevail.

**Speech of Viscount Motono, Japanese Minister for Foreign Affairs,
in the Diet, January 23, 1917¹**

The great war which has been ravaging Europe for two years and a half is an event without precedent in the history of humanity. Without doubt it will have incalculable effect upon the destiny of nations in the future; on the issue of this war will hang the liberty of nations. The question is whether the small and the great nations of Europe will be subjugated by Germany or not.

You all know the origin of the present war. The impossible demands of Austria-Hungary upon Serbia were apparently the cause of the taking up of arms by European nations, but the real cause was Germany's ambition for world domination for which preparations were being made for many years past. Germany cherishing great ambitions for the distant future, had seized upon Tsingtau in 1898 with the view of gobbling up the whole of China in time. That this has been so nobody will contend to-day. The great pan-Germanist propaganda, the elaborate and marvelous military preparations, these are no longer a secret.

In the summer of 1914 Germany thought that the time had come for imposing upon the world a powerful German domination; she thought that in a couple of months there would be an end of her enemies' resistance. All calculations were baffled and now at the end of two years and a half she finds herself forced to pursue the struggle anew.

Japan, at the first appeal from Great Britain, did not hesitate for a moment in coming to her aid; she has loyally accomplished her duty by her ally, our army and navy succeeded in a few months in bringing to naught the German resistance in our part of the world. In destroying the bases of German activity in China, Japan has secured the order and tranquillity of the extreme East. In cooperating with Great Britain in the destroying of the German fleet in the Pacific and the Indian Oceans Japan has greatly contributed to the assuring of the safety of mercantile trade in these seas not only for Japan and Great Britain but for all nations, allied and neutral. At a time when our enemies do not recoil from the most horrible means of destroy-

¹Furnished by the Imperial Japanese Embassy at Washington.

ing the trade by sea of the nations, the Pacific and the Indian oceans are free from German brigandage. I am persuaded that the civilized world will do us justice for the services rendered by Japan to the cause of humanity at large.

In declaring war on Germany and in acceding to the Declaration of London of the 5th of September, 1914, Japan has made her position clear in the formidable struggle. We have taken part in this war not merely for the defence of our particular interests but also for the defence of those of our allies, as well as the interests of humanity in general.

It is necessary that righteousness and justice should emerge victorious out of this merciless struggle; it is necessary that the world should be given to live in all tranquillity after this cataclysm. In order to attain this noble end there must be before everything a victory complete and definitive for our allied powers. Without a complete victory it need scarcely be remarked that the peace of the Far East for which we have made all manner of sacrifices will remain in real danger. And for obtaining this victory a sacred union not only of all the governments but also of the peoples ranged on our side in defence of the inseparable rights of humanity, is an essential condition.

In consenting to take part in this war, Japan was under the obligation, in view of her particular position in Asia, of limiting from the beginning her sphere of military action; but after having faithfully accomplished the task incumbent upon her she has made and will ever make every effort toward the attainment of the final victory by her allies. The struggle between the allies and the common enemies is not one simply of military and naval forces, but it is a struggle extending over all spheres of human activities. It is the reason why we should march forward in every direction in an accord as complete as possible. Hence it is that we have adhered to the resolutions of the Economic Conference of Paris. It is for that reason again that the Imperial Government have taken some administrative measures with a view to safeguarding our common interests in the matter of postal and telegraphic communications. It is also with that end in view that the Government are contemplating to take other and different measures in consequence of the Economic Conference. It was further for the purpose of keeping in more complete accord with our allies that the Imperial Government gave a prompt assent to the project of the response, proposed by the French Government in the name of the allies, to the German and American notes. The rea-

sons that caused our refusal toward the German proposal have been clearly stated in the identic note. The Imperial Government consider with the allied governments that the pretensions of the hostile governments are inadmissible and that the time has not yet come for entering upon peace negotiations. With your permission I will next say a few words in regard to our reply to the American note. While highly approving the elevated sentiments which inspired this *démarche* of the American Government, the allied governments did not feel bound to accede to the desire of peace expressed by that government. The reasons for this decision on their part were set forth in the note forwarded in Paris to the American Ambassador by the French Government in the name of the allied powers. In the reply to the American Government, the allied powers state a certain number of conditions which they consider it indispensable to impose on the hostile governments on the occasion of the conclusion of peace. The absence of all reference to the future disposition of the German colonies has justly attracted the attention of the Japanese public, neither has it escaped the notice of the Imperial Government. The reply to the American note by no means contains all the conditions of peace. The allied powers have reserved the right to present the conditions in detail at the time of the peace negotiations. This last point is indicated in the note to America. The Imperial Government, when they adhered to the project of the response to the American note, knew that the allied powers had not neglected to take into proper consideration the just claims which Japan would present at the peace negotiations. Nevertheless to clear away all misunderstanding on this point, we took the necessary measures, in sending our reply of adhesion to the French Government, for safeguarding our rights, and I am happy to be able to assure you that a most satisfactory understanding exists on this subject among all the allies at a moment when the allied powers have taken the decision of continuing the war until the victory of justice and righteousness as well as true peace of the world has been realized. I would most eagerly express our sentiments of the most sincere appreciation for the efforts displayed by Great Britain, France, Russia, Italy, Belgium, Serbia, Montenegro and Roumania. At the same time I would express our most profound admiration for their brave armies and navies. I also wish to testify to our hearty sympathy for the inhabitants of the regions fouled by the foot of the cruel and barbarous invaders and I am firmly persuaded that a future more glorious is in store for these unfortunate peoples.

It is needless for me to state that our alliance with Great Britain is the basis of our foreign policy. The present war has demonstrated the solidity as well as the benefits of this alliance. The Japanese and the British people have realized in the most evident manner the necessity of this alliance for the protection of the rights and interests of the two empires. It is at the same time an essential guaranty for the maintenance of the order and peace of the extreme Orient.

We must also felicitate ourselves upon the understanding signed between Japan and Russia in July, 1916. All the succeeding cabinets of Japan since the end of the Russian war have pursued the policy of *rapprochement* with that nation. The two governments of Japan and Russia saw the necessity of this policy immediately after the conclusion of peace. Inaugurated by our first entente in 1907, this policy has been uniformly pursued and enhanced by the successive ententes which finally led to the Convention of 1916, concluded amidst events destined to produce incalculable consequences upon Russia. This convention has had the effect of enlightening the public opinion of Russia to the perception of the sincerity of the Japanese sentiments. I do not hesitate to state to you that the government and people of Russia testify a profound sense of gratitude to Japan for the great services rendered to Russia in our furnishing her with ammunitions which facilitated her military operations. Having been a personal observer for more than two years of the evolution of the Russian mentality, I believe I am able to affirm to you that the Russian nation entertain the most sincere and frank amity toward Japan. Japan and Russia have great interests in common to be safeguarded in the Far East. This intimate accord between the two nations, no less than the Anglo-Japanese alliance, constitutes an indispensable guaranty for peace in our part of the world in spite of the troubled times amidst which we find ourselves.

I am happy to be able to state to you that our relations with the neutral powers are more than ever cordial. I am persuaded that all the neutral nations will do us full justice for the immense service done by our navy for their foreign commerce. If we had not, in concert with the British navy, destroyed the German fleet in the Pacific, where would the maritime commerce of the neutral countries be, especially of countries such as America, Australia and China, which border upon the Pacific? I am firmly convinced that all the neutral powers that have profited by the security of the seas assured by the two navies, will recognize the justice of what I have just stated to you.

You are aware that Japan has always preserved the most sincerely amicable relations with the government and the people of America, though from time to time there have been light clouds which have cast a shadow upon our relations though ever so little. These clouds have generally been dissipated by the common good-will of the two governments. There certainly have been questions about which the two governments could not come to a complete accord, but that will be the case between even the best of allies. However, when one faces the most thorny questions in a friendly and frank spirit, with the will of solving them in an amicable and conciliatory manner, there will surely be found a way to an understanding. It is this end that the two governments have always pursued to the great satisfaction of our two countries. It affords me great pleasure to state that there have been symptoms of more real sympathy manifested of late between the countries. As one instance we have been approached by the American capitalists for cooperation in financial affairs in China. The Imperial Government are watching with lively interest the further development of the economic *rapprochement* between the two countries.

I would not speak of all the events that have come to pass in China in recent years, which must be still fresh in your memory. We must recognize that as the result of these events there has been created a certain atmosphere which is not altogether desirable. It is for the good of our two countries that this state of things should absolutely disappear. In view of the great political and economic interests which Japan possesses in China, it has always been the sincere desire of this country to see her neighbor developed along the paths of modern civilization and we have spared no efforts for that purpose. It was for that purpose also that we sent to China a number of civil and military advisors, and that we concurred with other countries in furnishing China with the financial means of accomplishing reforms of every kind and also that we undertook the education and instruction of the young Chinese students who are coming to Japan by thousands. Nobody would contradict me when I say that China certainly is indebted much to Japan in her work of reorganization pursued for several years. Why is it that in spite of all our well-meant efforts, China seems often to regard us with mistrust and even animosity? There may be many causes for that, but the chief reason, to my mind, is the tendency on the part of the Japanese towards interference in China's internal quarrels since the overthrow of the Manchu Dynasty and the establishment of the republican *régime*. There have since been formed in China a number of political parties, for one or another

of which parties there have been some Japanese who have expressed sympathy. These persons have developed marked tendency towards a desire to help these political parties to obtain power according as their own political opinions or personal sympathy dictate. I am persuaded that all these persons are perfectly sincere in their desire of helping our neighboring friends, but the results were deplorable. To what did our attitude at the moment of the formation of the Republic lead, and to what did all the movements inimical to the President lead? You are aware of it so well that I need not dwell upon it. But what I have to state is that in the wake of all these facts we have had no other results than to invite, on the one hand, the animosity of our neighbors and, on the other, to cause other nations' misunderstanding of the real intentions of Japan. I do not hesitate to state that the present Cabinet absolutely repudiate this mode of action. We desire to maintain the most cordial relations with China. We desire nothing more than the gradual accomplishment by China of all her schemes of reform, and we shall leave nothing undone in order to help her in the task, if she so desires. Endeavors shall not be wanting on our part to make China comprehend the sincerity of our sentiments toward her, though it must always remain with China whether she should have faith in us or not. We have not the least intention, I formally declare hereby, of favoring this or that political party in China; all we desire is the maintenance of cordial relations of amity with China herself and not with any political party. It is essential that China should develop herself smoothly along the path of progress and we dread nothing more than the possible disintegration of China through her continued troubles. We must put forth every effort to prevent that sad possibility, for nothing is more indispensable than that China should maintain her independence and territorial integrity. The other point to which the government must call your attention is the special position occupied by Japan in certain portions of China. I am speaking especially of South Manchuria and East Inner Mongolia. Our special situation in these parts has been acquired at the cost of immense sacrifice and immeasurable efforts on our part and on the strength of this circumstance our rights and interests in these parts have been consecrated by treaties and arrangements. It is therefore the most elementary duty of the Imperial Government toward the nation to safeguard these rights and interests. In the same way it is necessary that China should comprehend that it is not only a matter of compliance with international duty that China should respect these rights and interests of Japan, but it would be

nothing more than the realization of the good understanding between our two countries.

If China would continue, as we sincerely desire she would, relations of the greatest confidence and amity with Japan, it is necessary that she should follow the same lines of conduct as those we intend to follow with her. It is on this condition alone that anything like a firm understanding can exist between us. The Imperial Government have the strongest conviction that if the Chinese Government understood the pure and clear intentions of Japan, China would not have any objection to Japan's sincere policy of good understanding in the relations between Japan and China. Nobody certainly would dispute the fact that Japan occupies a peculiar position in China as well on account of her geographic position as her political and economic interests; but we must not any more ignore the fact that other powers have likewise immense interests in China. We must, therefore, while safeguarding our own interests there, take care to respect those of other nations. We must before everything try to move in accord with powers with which we are under the pledge of special arrangements and in a general way endeavor to reconcile our interests with those of others. We are firmly convinced that such is the line of conduct best suited to the common interests of all powers concerned. Japan has not any intention to follow an egoistic policy in China. It is her sincere desire to keep in complete accord with the countries concerned, and the Imperial Government firmly believe that with good-will on both sides we shall be able to arrive at a complete understanding which will be for the best interests both of China and all other countries.

Extract from the Speech of Bonar Law, Chancellor of the Exchequer, Bristol, England, January 24, 1917¹

We are working for, looking forward to peace. The Germans the other day made us what they call an offer of peace. It received from the Allied Governments the only reply which was possible. You have read the speech made by President Wilson. It was a frank speech, and it is right that any member of an Allied Government who refers to it should speak frankly too. It is impossible that he and we can look on this question from the same point of view. Whatever his private feeling may be, the head of a great neutral State must take a neutral attitude. America is very far removed from the horrors of

¹*The Times*, London, January 25, 1917.

this war; we are in the midst of it. America is neutral; we are not neutral. We believe that the essence of this conflict is the question, which is as old as time, of the difference between right and wrong. We know that this is a war of naked aggression. We know that the crimes which have accompanied the conduct of the war—crimes almost incredible after 2,000 years of Christianity—are small in comparison with the initial crime by which the men responsible for the policy of Germany with cold-blooded calculation, because they thought it would pay, plunged the world into the horrors we are enduring.

President Wilson's aim is to have peace now and security for peace in the future. That is our aim also, and it is our only aim. He hopes to secure it by means of a league of peace among the nations, and he is trying to get the American Senate to do something to make this possible. It would not be right, in my opinion, for us to look upon that suggestion as altogether Utopian. You know that until quite recently duelling was common. Now the idea that private quarrels should be settled by the sword is unthinkable. But, after all, it is for us not an abstract question for the future. It is a question of life or death now; and whether we consider that the aim which he and we have in common can be secured by his methods, we can not forget the past. For generations humane men, men of good-will among all nations have striven, by Hague Conventions, by peace conferences, by every means, to make war impossible. I said humane men. They have striven, if not to make it impossible, to mitigate its horrors and to see how the barriers against barbarism could be maintained.

At the outbreak of war Germany swept aside every one of those barriers and tore up the scraps of paper which she had solemnly signed. She spread mines in the open sea; on sea and land she committed atrocities, incredible atrocities, contrary to conventions which she had herself signed. At this moment she is driving the populations of enemy territory into slavery, and, worse than that, in some cases she is making the subjects of the Allies take up arms against their own country. All that has happened and no neutral country has been able to stop it, and, more than that, no neutral country has made any protest, at least no effective protest. It is for us a question of life or death. We must have stronger guarantees for the future peace of the world.

We have rejected the proposal to enter into peace negotiations not from any lust of conquest, not from any longing for shining victories; we have rejected it not from any feeling of vindictiveness or even a desire for revenge; we have rejected it because peace now would mean

peace based upon a German victory. It would mean a military machine which is still unbroken, it would mean also that that machine would be in the hands of a nation prepared for war, who would set about preparing for it again, and, at their own time, plunge us again into the miseries which we are enduring to-day. What President Wilson is longing for we are fighting for. . . .

Our sons and brothers are dying for it, and we mean to secure it. The heart of the people of our country is longing for peace. We are praying for peace, a peace that will bring back in safety those who are dear to us, but a peace which will mean this—that those who will never come back shall not have laid down their lives in vain.

**Speech of Premier Tisza in the Hungarian Parliament,
January 25, 1917¹**

Pursuant to our peaceful policy before the war and our attitude during the war, as well as our recent peace action, we can only greet with sympathy every effort aiming at the restoration of peace. We are, therefore, inclined to continue a further exchange of views regarding peace with the United States Government. This exchange must naturally occur in agreement with our allies.

In view of the fact that President Wilson in his address makes certain distinctions between our reply and our enemies' reply, I must especially state that the quadruple alliance declares that it is inclined to enter into peace negotiations, but that at the same time it will propose terms which, in its opinion, are acceptable for the enemy and calculated to serve as a basis for a lasting peace.

On the other hand, the conditions of peace contained in our enemies' reply to the United States are equivalent at least to the disintegration of our monarchy and of the Ottoman Empire. This amounts to an official announcement that the war aims at our destruction, and we are, therefore, forced to resist with our utmost strength as long as this is the war aim of our enemies.

In such circumstances it can not be doubted which group of powers by its attitude is the obstacle to peace, and this group approximates to President Wilson's conception. The President opposes a peace imposed by a conqueror, which one party would regard as a humiliation and an intolerable sacrifice. From this it follows clearly that so long as the powers opposed to us do not substantially change their war

¹*The New York Times*, January 26, 1917.

aims an antagonism that can not be bridged stands between their viewpoint and the President's peace aims.

My second observation has to do with the principle of nationalities. I desire to be brief; therefore, I will not dilate on the question of what moral justification England and Russia have to lay stress on the principle of nationalities in a peace program which would destroy the Hungarian nation and deliver the Mohammedan population of the Bosphorus region into Russian domination. But I say that the whole public opinion in Hungary holds to the principle of nationalities in honor.

The principle of nationalities in the formation of national States, however, can only prevail unrestrictedly where single nations live within sharply marked ethnographical boundaries in compact masses and in regions suited to the organization of a State. In territories where various races live intermingled it is impossible that every single race can form a national State. In such territories it would only be possible to create a State without national character, or one in which a race by its numbers and importance predominates, thus imprinting its national character.

In such circumstances, therefore, only that limited realization of the principle of nationalities is possible which the President of the United States rightfully expresses in demanding that security of life and religion and individual and social development should be guaranteed to all peoples. I believe that nowhere is this demand realized to such a degree as in both States of the monarchy. I believe that in the regions of Southeastern Europe, which are inhabited by a varied mixture of peoples and nations, the demand for free development of nations can not be more completely realized than it is by the existence and domination of the Austro-Hungarian monarchy.

We feel ourselves, therefore, completely in agreement with the President's demands. We shall strive for the realization as far as possible of this principle in the regions lying in our immediate neighborhood. I can only repeat that, true to our traditional foreign policy and true to the standpoint we took in our peace action in conjunction with our allies, we are ready to do everything that will guarantee to the peoples of Europe the blessings of a lasting peace.

I beg you to take cognizance of my reply.

**German Note to the United States regarding the Submarine
Blockade, January 31, 1917¹**

[TRANSLATION]

GERMAN EMBASSY,



Washington, January 31, 1917.

MR. SECRETARY OF STATE: Your Excellency was good enough to transmit to the Imperial Government a copy of the message which the President of the United States of America addressed to the Senate on the 22, inst. The Imperial Government has given it the earnest consideration which the President's statements deserve, inspired as they are, by a deep sentiment of responsibility. It is highly gratifying to the Imperial Government to ascertain that the main tendencies of this important statement correspond largely to the desires and principles professed by Germany. These principles especially include self-government and equality of rights for all nations. Germany would be sincerely glad if in recognition of this principle countries like Ireland and India, which do not enjoy the benefits of political independence, should now obtain their freedom. The German people also repudiate all alliances which serve to force the countries into a competition for might and to involve them in a net of selfish intrigues. On the other hand Germany will gladly cooperate in all efforts to prevent future wars. The freedom of the seas, being a preliminary condition of the free existence of nations and the peaceful intercourse between them, as well as the open door for the commerce of all nations, has always formed part of the leading principles of Germany's political program. All the more the Imperial Government regrets that the attitude of her enemies who are so entirely opposed to peace makes it impossible for the world at present to bring about the realization of these lofty ideals. Germany and her allies were ready to enter now into a discussion of peace and had set down as basis the guaranty of existence, honor and free development of their peoples. Their aims, as has been expressly stated in the note of December 12, 1916, were not directed towards the destruction or annihilation of their enemies and were according to their conviction perfectly compatible with the rights of the other nations. As to Belgium for which such warm and cordial sympathy is felt in the United States, the Chancellor had declared only a few weeks previously that its annexation had never formed part of Germany's intentions. The peace to be signed with Belgium was to provide for such conditions

¹Official print of the Department of State.

in that country, with which Germany desires to maintain friendly neighborly relations, that Belgium should not be used again by Germany's enemies for the purpose of instigating continuous hostile intrigues. Such precautionary measures are all the more necessary, as Germany's enemies have repeatedly stated not only in speeches delivered by their leading men, but also in the statutes of the economical conference in Paris, that it is their intention not to treat Germany as an equal, even after peace has been restored but to continue their hostile attitude and especially to wage a systematical economical war against her.

The attempt of the four allied powers to bring about peace has failed owing to the lust of conquest of their enemies, who desired to dictate the conditions of peace. Under the pretense of following the principle of nationality our enemies have disclosed their real aims in this war, viz., to dismember and dishonor Germany, Austria-Hungary, Turkey and Bulgaria. To the wish of reconciliation they oppose the will of destruction. They desire a fight to the bitter end.

A new situation has thus been created which forces Germany to new decisions. Since two years and a half England is using her naval power for a criminal attempt to force Germany into submission by starvation. In brutal contempt of international law the group of Powers led by England does not only curtail the legitimate trade of their opponents but they also by ruthless pressure compel neutral countries either to altogether forego every trade not agreeable to the Entente Powers or to limit it according to their arbitrary decrees. The American Government knows the steps which have been taken to cause England and her allies to return to the rules of international law and to respect the freedom of the seas. The English Government, however, insists upon continuing its war of starvation, which does not at all affect the military power of its opponents, but compels women and children, the sick and the aged to suffer, for their country, pains and privations which endanger the vitality of the nation. Thus British tyranny mercilessly increases the sufferings of the world indifferent to the laws of humanity, indifferent to the protests of the neutrals whom they severely harm, indifferent even to the silent longing for peace among England's own allies. Each day of the terrible struggle causes new destruction, new sufferings. Each day shortening the war  the life of thousands of brave soldiers 

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any means destined to bring about the end of the war. Like the President of the United States, the Imperial Government had hoped to reach this goal by negotiations. After the attempts to come to an understanding with the Entente Powers have been answered by the latter with the announcement of an intensified continuation of the war, the Imperial Government—in order to serve the welfare of mankind in a higher sense and not to wrong its own people—is now compelled to continue the fight for existence, again forced upon it, with the full employment of all the weapons which are at its disposal.

Sincerely trusting that the people and Government of the United States will understand the motives for this decision and its necessity, the Imperial Government hopes that the United States may view the new situation from the lofty heights of impartiality and assist, on their part, to prevent further misery and avoidable sacrifice of human life.

Enclosing two memoranda regarding the details of the contemplated military measures at sea, I remain, etc.,

(Signed) J. BERNSTORFF.

[INCLOSURE 1]

MEMORANDUM

After bluntly refusing Germany's peace offer the Entente Powers, stated in their note addressed to the American Government, that they are determined to continue the war in order to deprive Germany of German provinces in the West and the East, to destroy Austria-Hungary and to annihilate Turkey. In waging war with such aims, the Entente Allies are violating all rules of international law, as they prevent the legitimate trade of neutrals with the Central Powers, and of the neutrals among themselves. Germany has, so far, not made unrestricted use of the weapon which she possesses in her submarines. Since the Entente Powers, however, have made it impossible to come to an understanding based upon equality of rights of all nations, as proposed by the Central Powers and have instead declared only such a peace to be possible, which shall be dictated by the Entente Allies and shall result in the destruction and humiliation of the Central Powers, Germany is unable further to forego the full use of her submarines. The Imperial Government, therefore, does not doubt that the Government of the United States will understand the situation thus forced upon Germany by the Entente Allies' brutal methods of war and by their determination to destroy the Central Powers, and that the Government of the United States will further realize that the

now openly disclosed intentions of the Entente Allies give back to Germany the freedom of the action which she reserved in her note addressed to the Government of the United States on May 4, 1916.

Under these circumstances Germany will meet the illegal measures of her enemies by forcibly preventing after February 1, 1917, in a zone around Great Britain, France, Italy and in the Eastern Mediterranean all navigation, that of neutrals included, from and to England and from and to France, etc., etc. All ships met within that zone will be sunk.

The Imperial Government is confident that this measure will result in a speedy termination of the war and in the restoration of peace which the Government of the United States has so much at heart. Like the Government of the United States, Germany and her allies had hoped to reach this goal by negotiations. Now that the war, through the fault of Germany's enemies, has to be continued, the Imperial Government feels sure that the Government of the United States will understand the necessity of adopting such measures and are destined to bring about a speedy end of the horrible and useless bloodshed. The Imperial Government hopes all the more for such an understanding of her position, as the neutrals have under the pressure of the Entente Powers, suffered great losses, being forced by them either to give up their entire trade or to limit it according to conditions arbitrarily determined by Germany's enemies in violation of international law.

[INCLOSURE 2]

MEMORANDUM

From February 1, 1917, all sea traffic will be stopped with every available weapon and without further notice in the following blockade zones around Great Britain, France, Italy and in the Eastern Mediterranean.

In the North: The zone is confined by a line at a distance of 20 sea miles along the Dutch coast to Terschelling fire ship, the degree of longitude from Terschelling fire ship to Udsire, a line from there across the point 62 degrees north 0 degrees longitude to 62 degrees north 5 degrees west, further to a point 3 sea miles south of the southern point of the Faroe Islands, from there across point 62 degrees north 10 degrees west to 61 degrees north 15 degrees west, then 57 degrees north 20 degrees west to 47 degrees north 20 degrees west, further to 43 degrees north, 15 degrees west, then along the degree of latitude 43 degrees north to 20 sea miles from Cape Finisterre and

at a distance of 20 sea miles along the north coast of Spain to the French boundary.

In the South: The Mediterranean

For neutral ships remains open: The sea west of the line Pt. del'Espiquette to 38 degrees 20 minutes north and 6 degrees east, also north and west of a zone 61 sea miles wide along the north African coast, beginning at 2 degrees longitude west. For the connection of this sea zone with Greece there is provided a zone of a width of 20 sea miles north and east of the following line: 38 degrees north and 6 degrees east to 38 degrees north and 10 degrees east to 37 degrees north and 11 degrees 30 minutes east to 34 degrees north and 11 degrees 30 minutes east to 34 degrees north and 22 degrees 30 minutes east.

From there leads a zone 20 sea miles wide west of 22 degrees 30 minutes eastern longitude into Greek territorial waters.

Neutral ships navigating these blockade zones do so at their own risk. Although care has been taken, that neutral ships which are on their way toward ports of the blockade zones on February 1, 1917, and have come in the vicinity of the latter, will be spared during a sufficiently long period it is strongly advised to warn them with all available means in order to cause their return.

Neutral ships which on February 1, are in ports of the blockaded zones, can, with the same safety, leave them if they sail before February 5, 1917, and take the shortest route into safe waters.

The instructions given to the commanders of German submarines provide for a sufficiently long period during which the safety of passengers on unarmed enemy passenger ships is guaranteed.

Americans, en route to the blockade zone on enemy freight steamers, are not endangered, as the enemy shipping firms can prevent such ships in time from entering the zone.

Sailing of regular American passenger steamers may continue undisturbed after February 1, 1917, if

- a) the port of destination is Falmouth
- b) sailing to or coming from that port course is taken via the Scilly Islands and a point 50 degrees north 20 degrees west,
- c) the steamers are marked in the following way which must not be allowed to other vessels in American ports: On ships' hull and superstructure 3 vertical stripes 1 meter wide each to be painted alternately white and red. Each mast should show a large flag checkered white and red, and the stern the American national flag.

Care should be taken that, during dark, national flag and painted marks are easily recognizable from a distance and that the boats are well lighted throughout,

- d) one steamer a week sails in each direction with arrival at Falmouth on Sunday and departure from Falmouth on Wednesday
- e) The United States Government guarantees that no contraband (according to German contraband list) is carried by those steamers.

President Wilson's Address to Both Houses of Congress in Joint Session, February 3, 1917¹

GENTLEMEN OF THE CONGRESS: The Imperial German Government on the thirty-first of January announced to this Government and to the governments of the other neutral nations that on and after the first day of February, the present month, it would adopt a policy with regard to the use of submarines against all shipping seeking to pass through certain designated areas of the high seas to which it is clearly my duty to call your attention.

Let me remind the Congress that on the eighteenth of April last, in view of the sinking on the twenty-fourth of March of the cross-channel passenger steamer *Sussex* by a German submarine without summons or warning, and the consequent loss of the lives of several citizens of the United States who were passengers aboard her, this Government addressed a note to the Imperial German Government in which it made the following declaration:

"If it is still the purpose of the Imperial Government to prosecute relentless and indiscriminate warfare against vessels of commerce by the use of submarines without regard to what the Government of the United States must consider the sacred and indisputable rules of international law and the universally recognized dictates of humanity, the Government of the United States is at last forced to the conclusion that there is but one course it can pursue. Unless the Imperial Government should now immediately declare and effect an abandonment of its present methods of submarine warfare against passenger and freight-carrying vessels, the Government of the United States can have no choice but to sever diplomatic relations with the German Empire altogether."

¹*Congressional Record*, February 3, 1917, p. 1917.

In reply to this declaration the Imperial German Government gave this Government the following assurance:

"The German Government is prepared to do its utmost to confine the operations of war for the rest of its duration to the fighting forces of the belligerents, thereby also insuring the freedom of the seas, a principle upon which the German Government believes, now as before, to be in agreement with the Government of the United States.

"The German Government, guided by this idea, notifies the Government of the United States that the German naval forces have received the following orders: In accordance with the general principles of visit and search and destruction of merchant vessels recognized by international law, such vessels, both within and without the area declared as naval war zone, shall not be sunk without warning and without saving human lives, unless these ships attempt to escape or offer resistance.

"But," it added, "neutrals can not expect that Germany, forced to fight for her existence, shall, for the sake of neutral interest, restrict the use of an effective weapon if her enemy is permitted to continue to apply at will methods of warfare violating the rules of international law. Such a demand would be incompatible with the character of neutrality, and the German Government is convinced that the Government of the United States does not think of making such a demand, knowing that the Government of the United States has repeatedly declared that it is determined to restore the principle of the freedom of the seas, from whatever quarter it has been violated."

To this the Government of the United States replied on the eighth of May, accepting, of course, the assurances given, but adding,

"The Government of the United States feels it necessary to state that it takes it for granted that the Imperial German Government does not intend to imply that the maintenance of its newly announced policy is in any way contingent upon the course or result of diplomatic negotiations between the Government of the United States and any other belligerent Government, notwithstanding the fact that certain passages in the Imperial Government's note of the 4th instant might appear to be susceptible of that construction. In order, however, to avoid any possible misunderstanding, the Government of the United States notifies the Imperial Government that it can not for a moment entertain, much less discuss, a suggestion that respect by German naval authorities for the rights of citizens of the United States upon the high seas should in any way or in the slightest degree be made

contingent upon the conduct of any other Government affecting the rights of neutrals and non-combatants. Responsibility in such matters is single, not joint; absolute, not relative."

To this note of the eighth of May the Imperial German Government made no reply.

On the thirty-first of January, the Wednesday of the present week, the German Ambassador handed to the Secretary of State, along with a formal note, a memorandum which contains the following statement:

"The Imperial Government, therefore, does not doubt that the Government of the United States will understand the situation thus forced upon Germany by the Entente Allies' brutal methods of war and by their determination to destroy the Central Powers, and that the Government of the United States will further realize that the now openly disclosed intentions of the Entente Allies give back to Germany the freedom of action which she reserved in her note addressed to the Government of the United States on May 4, 1916."

"Under these circumstances Germany will meet the illegal measures of her enemies by forcibly preventing after February 1, 1917, in a zone around Great Britain, France, Italy, and in the Eastern Mediterranean all navigation, that of neutrals included, from and to England and from and to France, etc., etc. All ships met within the zone will be sunk."

I think that you will agree with me that, in view of this declaration, which suddenly and without prior intimation of any kind deliberately withdraws the solemn assurance given in the Imperial Government's note of the fourth of May, 1916, this Government has no alternative consistent with the dignity and honour of the United States but to take the course which, in its note of the eighteenth of April, 1916, it announced that it would take in the event that the German Government did not declare and effect an abandonment of the methods of submarine warfare which it was then employing and to which it now purposes again to resort.

I have, therefore, directed the Secretary of State to announce to His Excellency the German Ambassador that all diplomatic relations between the United States and the German Empire are severed, and that the American Ambassador at Berlin will immediately be withdrawn; and, in accordance with this decision, to hand to His Excellency his passports.

Notwithstanding this unexpected action of the German Government, this sudden and deeply deplorable renunciation of its assur-

ances, given this Government at one of the most critical moments of tension in the relations of the two governments, I refuse to believe that it is the intention of the German authorities to do in fact what they have warned us they feel at liberty to do. I can not bring myself to believe that they will indeed pay no regard to the ancient friendship between their people and our own or to the solemn obligations which have been exchanged between them and destroy American ships and take the lives of American citizens in the wilful prosecution of the ruthless naval programme they have announced their intention to adopt. Only actual overt acts on their part can make me believe it even now.

If this inveterate confidence on my part in the sobriety and prudent foresight of their purpose should unhappily prove unfounded; if American ships and American lives should in fact be sacrificed by their naval commanders in heedless contravention of the just and reasonable understandings of international law and the obvious dictates of humanity, I shall take the liberty of coming again before the Congress, to ask that authority be given me to use any means that may be necessary for the protection of our seamen and our people in the prosecution of their peaceful and legitimate errands on the high seas. I can do nothing less. I take it for granted that all neutral governments will take the same course.

We do not desire any hostile conflict with the Imperial German Government. We are the sincere friends of the German people and earnestly desire to remain at peace with the Government which speaks for them. We shall not believe that they are hostile to us unless and until we are obliged to believe it; and we purpose nothing more than the reasonable defense of the undoubted rights of our people. We wish to serve no selfish ends. We seek merely to stand true alike in thought and in action to the immemorial principles of our people which I sought to express in my address to the Senate only two weeks ago,—seek merely to vindicate our right to liberty and justice and an unmolested life. These are the bases of peace, not war. God grant we may not be challenged to defend them by acts of wilful injustice on the part of the Government of Germany!

**Severance of Diplomatic Relations between the United States and
Germany, February 3, 1917**

The Secretary of State to the German Ambassador¹

DEPARTMENT OF STATE,
Washington, February 3, 1917.

EXCELLENCY: In acknowledging the note with accompanying memoranda, which you delivered into my hands on the afternoon of January 31st, and which announced the purpose of your Government as to the future conduct of submarine warfare, I would direct your attention to the following statements appearing in the correspondence which has passed between the Government of the United States and the Imperial German Government in regard to submarine warfare.

This Government on April 18, 1916, in presenting the case of the *Sussex*, declared—

“If it is still the purpose of the Imperial Government to prosecute relentless and indiscriminate warfare against vessels of commerce by the use of submarines without regard to what the Government of the United States must consider the sacred and indisputable rules of international law and the universally recognized dictates of humanity, the Government of the United States is at last forced to the conclusion that there is but one course it can pursue. Unless the Imperial Government should now immediately declare and effect an abandonment of its present methods of submarine warfare against passenger and freight-carrying vessels, the Government of the United States can have no choice but to sever diplomatic relations with the German Empire altogether.”

In reply to the note from which the above declaration is quoted Your Excellency's Government stated in a note dated May 4, 1916—

“The German Government, guided by this idea, notifies the Government of the United States that the German naval forces have received the following orders: In accordance with the general principles of visit and search and destruction of merchant vessels recognized by international law, such vessels, both within and without the area declared as naval war zone, shall not be sunk without warning and without saving human lives, unless these ships attempt to escape or offer resistance.

“But neutrals can not expect that Germany, forced to fight for her existence, shall, for the sake of neutral interests, restrict the use of an effective weapon if her enemy is permitted to continue to

¹Official print of the Department of State.

apply at will methods of warfare violating the rules of international law. Such a demand would be incompatible with the character of neutrality, and the German Government is convinced that the Government of the United States does not think of making such a demand, knowing that the Government of the United States has repeatedly declared that it is determined to restore the principle of the freedom of the seas, from whatever quarter it has been violated."

To this reply this Government made answer on May 8, 1916, in the following language:

"The Government of the United States feels it necessary to state that it takes it for granted that the Imperial German Government does not intend to imply that the maintenance of its newly announced policy is in any way contingent upon the course or result of diplomatic negotiations between the Government of the United States and any other belligerent Government, notwithstanding the fact that certain passages in the Imperial Government's note of the 4th instant might appear to be susceptible of that construction. In order, however, to avoid any possible misunderstanding, the Government of the United States notifies the Imperial Government that it can not for a moment entertain, much less discuss, a suggestion that respect by German naval authorities for the rights of citizens of the United States upon the high seas should in any way or in the slightest degree be made contingent upon the conduct of any other Government affecting the rights of neutrals and non-combatants. Responsibility in such matters is single, not joint; absolute, not relative."

To this Government's note of May 8th no reply was made by the Imperial Government.

In one of the memoranda accompanying the note under acknowledgment, after reciting certain alleged illegal measures adopted by Germany's enemies, this statement appears:

"The Imperial Government, therefore, does not doubt that the Government of the United States will understand the situation thus forced upon Germany by the Entente Allies' brutal methods of war and by their determination to destroy the Central Powers, and that the Government of the United States will further realize that the now openly disclosed intentions of the Entente Allies give back to Germany the freedom of action which she reserved in her note addressed to the Government of the United States on May 4, 1916,

"Under these circumstances Germany will meet the illegal measures of her enemies by forcibly preventing, after February 1, 1917, in a zone around Great Britain, France, Italy, and in the eastern

Mediterranean all navigation, that of neutrals included, from and to England and from and to France, etc., etc. All ships met within the zone will be sunk."

In view of this declaration, which withdraws suddenly and without prior intimation the solemn assurance given in the Imperial Government's note of May 4, 1916, this Government has no alternative consistent with the dignity and honor of the United States but to take the course which it explicitly announced in its note of April 18, 1916, it would take in the event that the Imperial Government did not declare and effect an abandonment of the methods of submarine warfare then employed and to which the Imperial Government now purpose again to resort.

The President has, therefore, directed me to announce to Your Excellency that all diplomatic relations between the United States and the German Empire are severed, and that the American ambassador at Berlin will be immediately withdrawn, and in accordance with such announcement to deliver to Your Excellency your passports.

I have, etc.,

ROBERT LANSING.

Instructions to American Diplomatic Representatives in Neutral Countries, February 4, 1917, regarding the Severance of Diplomatic Relations between the United States and Germany¹

You will immediately notify the Government to which you are accredited that the United States, because of the German Government's recent announcement of its intention to renew unrestricted submarine warfare, has no choice but to follow the course laid down in its note of April 18, 1916 (the *Sussex* note).

It has, therefore, recalled the American Ambassador to Berlin and has delivered passports to the German Ambassador to the United States.

Say, also, that the President is reluctant to believe Germany actually will carry out her threat against neutral commerce, but if it be done the President will ask Congress to authorize use of the national power to protect American citizens engaged in their peaceful and lawful errands on the seas.

The course taken is, in the President's view, entirely in conformity with the principles he enunciated in his address to the Senate January 12 (the address proposing a world league for peace).

¹*Congressional Record*, February 8, 1917, p. 3263.

He believes it will make for the peace of the world if other neutral powers can find it possible to take similar action.

Report fully and immediately on the reception of this announcement and upon the suggestion as to similar action.

**Senate Resolution of February 7, 1917, endorsing President Wilson's
Action in severing Diplomatic Relations with Germany¹**

WHEREAS the President has, for the reasons stated in his address delivered to the Congress in joint session on February 3, 1917, severed diplomatic relations with the Imperial German Government by the recall of the American Ambassador at Berlin and by handing his passports to the German Ambassador at Washington; and

WHEREAS, notwithstanding this severance of diplomatic intercourse, the President has expressed his desire to avoid conflict with the Imperial German Government; and

WHEREAS the President declared in his said address that if in his judgment occasion should arise for further action in the premises on the part of the Government of the United States he would submit the matter to the Congress and ask the authority of the Congress to use such means as he might deem necessary for the protection of American seamen and people in the prosecution of their peaceful and legitimate errands on the high seas: Therefore be it

Resolved, That the Senate approves the action taken by the President as set forth in his address delivered before the joint session of the Congress, as above stated.

¹*Congressional Record*. February 7, 1917, p. 3046.

Rockefeller Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

Pamphlet No. 24

**DOCUMENTS RELATING TO THE CONTRO-
VERSY OVER NEUTRAL RIGHTS BETWEEN
THE UNITED STATES AND FRANCE,
1797-1800**

**PUBLISHED BY THE ENDOWMENT
WASHINGTON, D. C.
1917**

DOCUMENTS RELATING TO THE CONTROVERSY OVER NEUTRAL
RIGHTS BETWEEN THE UNITED STATES AND FRANCE, 1797-1800.

Extract from Notes to Treaties and Conventions, 1889, relating to
the United States and France¹

On the 25th of January, 1782, the Continental Congress passed an act authorizing and directing Dr. Franklin to conclude a Consular Convention with France on the basis of a scheme which was submitted to that body. Dr. Franklin concluded a very different convention, which Jay, the Secretary for Foreign Affairs, and Congress did not approve.² Franklin having returned to America, the negotiations then fell upon Jefferson, who concluded the Convention of 1788. This was laid before the Senate by President Washington on the 11th of June, 1789.

On the 21st of July it was ordered that the Secretary of Foreign Affairs attend the Senate to-morrow and bring with him such papers as are requisite to give full information relative to the Consular Convention between France and the United States.³ Jay was the Secretary thus "ordered." He was holding over, as the new Department was not then created. The Bill to establish a Department of Foreign Affairs had received the assent of both Houses the previous day,⁴ but had not yet been approved by the President.⁵ Jay appeared, as directed, and made the necessary explanations.⁶ The Senate then Resolved that the Secretary of Foreign Affairs under the former Congress be requested to peruse the said Convention, and to give his opinion how far he conceives the faith of the United States to be engaged, either by former

¹Treaties and Conventions, 1889.

²1 D. C., 1783-89, 232.

³Annals 1st Sess. 1st Cong., 52.

⁴Ib., 685.

⁵Ib., 52.

⁶Ib.,

NOTE.—The footnotes in this section are reproduced exactly as they appear in the original document excepting necessary changes in exponents.

agreed stipulations or negotiations entered into by our Minister at the Court of Versailles, to ratify in its present sense or form the Convention now referred to the Senate.¹ Jay made a written report on the 27th of July that in his judgment the United States ought to ratify the Convention;² and the Senate gave its unanimous consent.³ The Statute to carry the Convention into effect was passed the 14th of April, 1792.⁴

Three articles in the treaties with France concluded before the Constitution became the cause of difference between the two Powers:

1. Article XI of the Treaty of Alliance, by which the United States, for a reciprocal consideration, agreed to guarantee to the King of France his possessions in America, as well present as those which might be acquired by the Treaty of Peace.

2. Article XVII of the Treaty of Amity and Commerce, providing that each party might take into the ports of the other its prizes in time of war, and that they should be permitted to depart without molestation; and that neither should give shelter or refuge to vessels which had made prizes of the other unless forced in by stress of weather, in which case they should be required to depart as soon as possible.

3. Article XXII of the same Treaty, that foreign privateers, the enemies of one party, should not be allowed in the ports of the other to fit their ships or to exchange or sell their captures, or to purchase provisions except in sufficient quantities to take them to the next port of their own State.

Jefferson, who was the Minister of the United States at the Court of Versailles when the Constitution went into operation, was appointed Secretary of State by President Washington on the 26th of September, 1789. He accepted the appointment and presented Short to Neckar as chargé d'affaires of the United States.⁵

Gouverneur Morris, of New York, who had been in Europe from the dawn of the French revolution, and had been in regular friendly correspondence with Washington,⁶ was appointed Minister to France on the 12th of January, 1792. At the time of the appointment Wash-

¹Annals 1st Sess. 1st Cong., 52.

²Ib., 54.

³Ib.

⁴1 St. at L., 254.

⁵3 Jefferson's Works, 119.

⁶1 F. R. F., 379-399.

ington wrote him a friendly and admonitory letter: "The official communications from the Secretary of State accompanying this letter will convey to you the evidence of my nomination and appointment of you to be Minister Plenipotentiary of the United States at the Court of France; and my assurance that both were made with *all my heart* will, I am persuaded, satisfy you as to that fact. I wish I could add that the advice and consent flowed from a similar source. * * * Not to go further into detail I will place the ideas of your political adversaries in the light in which their arguments have presented them to me, namely, that the promptitude with which your lively and brilliant imagination is displayed allows too little time for deliberation and correction, and is the primary cause of those sallies which too often offend, and of that ridicule of character which begets enmity not easy to be forgotten, but which might easily be avoided if it was under the control of more caution and prudence. In a word, that it is indispensably necessary that more circumspection should be observed by our representatives abroad than they conceive you are inclined to adopt. In this statement you have the *pros* and *cons*. By reciting them I give you a proof of my friendship if I give you none of my policy or judgment."¹

Morris entered upon the duties of his office with these wise cautions in his hand, but he did not succeed in gaining the good-will of a succession of governments with which he had little sympathy:² for he writes Jefferson on the 13th of February, 1793: "Some of the leaders here who are in the diplomatic committee hate me cordially, though it would puzzle them to say why."³

When Morris was appointed Minister, the commercial relations between the two countries were satisfactory to neither. Exceptional favors to the commerce of the United States, granted by royal decree in 1787 and 1788,⁴ had been withdrawn, and a jealousy was expressed in France in consequence of the Act of Congress putting British and French commerce on the same basis in American ports.⁵ No exceptional advantages had come to France from the war of the revolution, and American commerce had reverted to its old British channels.

¹10 Washington's Writings, 216-18.

²1 F. R. F., 412.

³Ib., 350.

⁴Ib., 113, 116.

⁵See Short's correspondence, Ib., 120.

Jefferson greatly desired to conclude a convention with France which should restore the favors which American commerce had lost, and bring the two countries into closer connection. On the 10th of March, 1792, he instructs Morris: "We had expected, ere this, that in consequence of the recommendation of their predecessors, some overtures would have been made to us on the subject of a Treaty of commerce.

* Perhaps they expect that we should declare our readiness to meet on the ground of Treaty. If they do, we have no hesitation to declare it."¹ Again, on the 28th of April, he writes: "It will be impossible to defer longer than the next session of Congress some counter regulations for the protection of our navigation and commerce. I must entreat you, therefore, to avail yourself of every occasion of friendly remonstrance on this subject. If they wish an equal and cordial treaty with us, we are ready to enter into it. We would wish that this could be the scene of negotiation."² Again, on the 16th of June, he writes: "That treaty may be long on the anvil; in the mean time we cannot consent to the late innovations without taking measures to do justice to our own navigation."³

The great revolution of the 10th of August, and the imprisonment of the King, were duly reported by Morris;⁴ and Jefferson replied on the 7th of November: "It accords with our principles to acknowledge any government to be rightful which is formed by the will of the nation substantially declared. * * There are some matters which I conceive might be transacted with a government *de facto*; such, for instance, as the reforming the unfriendly restrictions on our commerce and navigation."⁵

To these instructions, Morris answered on the 13th of February, 1793, three weeks after the execution of the King, and a fortnight after the declaration of war against England: "You had * instructed me to endeavor to transfer the negotiation for a new treaty to America, and if the revolution of the 10th of August had not taken place, * I should, perhaps, have obtained what you wished. * * * The thing you wished for is done, and you can treat in America if

¹ Jefferson's Works, 338-9.

²Ib., 356.

³Ib., 449.

⁴1 F. R. F., 333.

⁵3 Jefferson's Works, 489.

you please."¹ In the same dispatch, Morris spoke of the "sending out of M. Genet, without mentioning to me a syllable either of his mission or his errand," and said that "the pompousness of this embassy could not but excite the attention of England."²

On the 7th of March, Morris wrote to Jefferson that "Genet took out with him three hundred blank commissions, which he is to distribute to such as will fit out cruisers in our ports to prey on the British commerce," and that he had already mentioned the fact to Pinckney, and had desired him to transmit it.³

The new condition of affairs caused by the war induced the President to submit a series of questions to the members of his cabinet for their consideration and reply.⁴ It would seem from a passage in Mr. Jefferson's *Ana* that the second of these questions—"Shall a Minister from France be received?" was suggested by the Secretary of State.⁵ An account of the meeting of the cabinet at which these questions were discussed will be found in vol. 9 Jefferson's Works, page 142.

The first two questions were unanimously answered in the affirmative—that a proclamation for the purpose of preventing citizens of the United States from interfering in the war between France and Great Britain should issue, and that Genet should be received; but by a compromise, the term "neutrality" was omitted from the text of the proclamation.⁶

When Genet landed in Charleston, on the 8th of April, 1793—even when he arrived in Philadelphia—it may be believed that Washington contemplated the probability of closer relations with France, and the possibility of a war with Great Britain. The relations with the latter Power were in a critical condition. British garrisons were occupying commanding positions on our lake frontiers, within the territory of the United States, in violation of the Treaty of 1783; and an Indian quarrel was on the President's hands, fomented, as he thought, by British intrigue.⁷

The policy which Washington favored, denied France nothing that she could justly demand under the Treaty, except the possible enforce-

¹1 F. R. F., 350.

²Ib.

³1 F. R. F., 354.

⁴10 Washington's Works, 337, 533.

⁵9 Jefferson's Works, 140.

⁶3 Jefferson's Works, 591.

⁷10 Washington's Works, 239. See also Morris's opinion, 1 F. R. F., 412, and Randolph's, *Ib.*, 678.

ment of the provision of guarantee; and that provision was waived by Genet in his first interview with Jefferson. "We know," he said, "that under present circumstances we have a right to call upon you for the guarantee of our islands. But we do not desire it."¹

On the other hand, it offered to Great Britain neutrality only, without a right of asylum for prizes, this being conferred exclusively by Treaty upon France; and it demanded the relinquishment of the Forts on the lakes and the abandonment of impressment.

It is not likely that the purposes of Genet's mission were fully comprehended by the American Government. By a Treaty in 1762 (first made public in 1836),² France ceded Louisiana to Spain. Genet was instructed to sound the disposition of the inhabitants of Louisiana towards the French Republic, and to omit no opportunity to profit by it should circumstances seem favorable. He was also to direct particular attention to the designs of the Americans upon the Mississippi.³

In one of his letters Genet says of himself, "I have been seven years a head of the bureau at Versailles, under the direction of Vergennes; I have passed one year at London, two at Vienna, one at Berlin, and five in Russia."⁴ His dealings with the United States showed that he had gathered little wisdom from such varied experience.

Before he left Charleston, which at that time had few regular means of communication with Philadelphia, he had armed and commissioned several vessels, and these vessels, dispatched to sea, had made many prizes.⁵ On his arrival at Philadelphia, Jefferson met him with complaints; but he justified his course at Charleston and denounced an interference with it as a "State Inquisition";⁶ and, admitting what was complained of, he contended that he had not exceeded the rights conferred upon his country by the Treaty of 1778.

The Secretary of State disputed his reasoning; upon which he retorted: "I wish, Sir, that the Federal Government should observe, as far as in their power, the public engagements contracted by both nations; and that by this generous and prudent conduct, they will give at least to the world the example of a true neutrality, which does not consist in the cowardly abandonment of their friends, in the moment

¹3 Jefferson's Works, 563.

²6 Garden, *Traité de Paix*, 266.

³8 Garden, *Traité de Paix*, 40-41.

⁴1 F. R. F., 183.

⁵Ib., 150.

⁶Ib.

when danger menaces them, but in adhering strictly, if they can do no better, to the obligations they have contracted with them."¹ He continued to claim and exercise the right of using the ports of the United States as a base for warlike operations, and, as the discussions went on, his expressions became stronger, and more contemptuous toward the President and the Government of the United States.

His instructions contemplated a political alliance between the two republics.² This was never proposed. He did propose, however, the re-arrangement of the debt due to France on the basis of the payment of a larger installment than was required by the contract, to be expended in the purchase of provisions in the United States:—and the conclusion of a new commercial Treaty. Jefferson declined the former, and as to the latter said that the participation in matters of Treaty given by the Constitution to the Senate would delay any definite answer.³

At length his conduct became so violent and indecent (Garden speaks of Washington as "*personnellement insulté dans les actes diplomatiques de M. Genet*")⁴ that Jefferson, on the 15th of August, 1793, instructed Morris to demand his recall. One of the first acts of his successor was to demand his arrest for punishment, which was refused by the Government of the United States "upon reasons of law and magnanimity."⁵

It was several months before the request for his recall could be complied with. Meanwhile, the United States being without a navy, prizes continued to be brought into their ports, and French Consuls attempted to hold prize courts within their jurisdiction.⁶ Genet also applied himself diligently at this time to the greater scheme respecting the Louisianas, which Garden regards as the main object of his mission. An armed expedition was organized in South Carolina and Georgia for an attack upon Florida.⁷ Garden says that he had assurances that all Louisiana desired to return under the jurisdiction of France, and he made serious preparations for conquering it. He prepared a co-operation of naval forces, which were to appear off the coast of Florida.

¹ F. R. F., 151.

² *Ib.*, 708.

³ *Ib.*, 568.

⁴ Garden, *Traité de Paix*, 43, "personally insulted by the acts of Mr. Genet."

⁵ F. R. F., 709.

⁶ *Ib.*, 147.

⁷ *Ib.*, 309, 426.

The principal land forces were to embark from Kentucky, and, descending the Ohio and the Mississippi, were to fall unexpectedly upon New Orleans."¹ The action of the Government and the recall of Genet put a stop to these expeditions against Spain, although Jefferson at that time thought a war with Spain inevitable.²

In retaliation the Executive Provisory Council of the French Republic demanded the recall of Morris.³ In communicating the fact to him Secretary Randolph said: "You have been assailed, however, from another quarter. Nothing has ever been said to any officer of our Government by the Ministers of France which required attention until the 9th day of April last, when Mr. Fauchet communicated to me a part of his instructions, indirectly but plainly making a wish for your recall. In a few days afterwards a letter was received from the Executive Provisory Council, expressive of the same wish. Mr. Fauchet was answered by me, under the direction of the President, as I am sure your good sense will think inevitable, that the act of reciprocity demanded should be performed."⁴

Washington wrote Morris, when his successor went out: "I have so far departed from my determination as to be seated in order to assure you that my confidence in, and friendship and regard for you, remain undiminished * * and it will be nothing new to assure you that I am always and very sincerely, yours, affectionately;"⁵ and when his correspondence was called for by the Senate, Washington himself, in association with Hamilton and Randolph, went over it (and it was voluminous) in order that nothing might be communicated which would put in peril those who had given him information, or which would re-act upon him in France.⁶

When the war broke out in February, 1793, Morris wrote Jefferson: "As to the conduct of the war, I believe it to be on the part of the enemy as follows: first, the maritime powers will try to cut off all supplies of provisions, and take France by famine; that is to say, excite revolt among the people by that strong lever. * * It is not improbable that our vessels bringing provisions to France may be cap-

¹⁸ Garden, *Traité de Paix*, 42. More detailed account of this affair will be found in 2 Pitkin's *Political History*, 379.

²³ Jefferson's *Works*, 591.

³¹ F. R. F., 463.

⁴ Randolph to Morris, April 29, 1794, MS. Dept. of State.

⁵¹ F. R. F., 409.

⁶ Randolph to Morris, April 29, 1794, MS. Dept. of State.

tured and taken into England."¹ His prescience was accurate. Such instructions were given to British men-of-war on the 8th day of June, 1793. The British measure, however, was anticipated by a decree of the National Convention of the 9th of May, authorizing ships of war and privateers to seize and carry into the ports of the Republic merchant-vessels which are wholly or in part loaded with provisions, being neutral property bound to an enemy's port, or having on board merchandise belonging to an enemy.² On the 23d of the same month the vessels of the United States were exempted from the operation of this decree;³ but on the 5th of December, 1793, President Washington sent a special message to Congress, in which he said: "The representative and executive bodies of France have manifested generally a friendly attachment to this country; have given advantages to our commerce and navigation, and have made overtures for placing these advantages on permanent ground; a decree, however, of the National Assembly, subjecting vessels laden with provisions to be carried into their ports, and making enemies' goods lawful prize in the vessel of a friend, contrary to our Treaty, though revoked at one time as to the United States, has been since extended to their vessels also, and has been recently stated to us."⁴

An embargo was laid upon vessels in the port of Bordeaux, "some exceptions in favor of those vessels said to be loaded on account of the republic" being made.⁵ Morris was promised daily that the embargo should be taken off, and indemnification be granted for the losses,⁶ but it was not done, and "a number of Americans," injured by it, complained to the Minister.⁷ The embargo was not removed until the 18th of November, 1794.⁸

Monroe succeeded Morris, and on the 12th of February, 1795, wrote: "Upon my arrival here I found our affairs * * in the worst possible situation. The Treaty between the two Republics was violated. Our commerce was harassed in every quarter and in every article, even that of tobacco not excepted. * * Our former Minister was not only without the confidence of the government, but an object of particular

¹ F. R. F., 350.

²Ib., 244.

³Ib.

⁴Ib., 141.

⁵Ib., 401.

⁶Ib., 403.

⁷Ib., 405.

⁸Ib., 689.

jealousy and distrust. In addition to which it was suspected that we were about to abandon them for a connection with England, and for which purpose *principally* it was believed that Mr. Jay had been sent there."¹

Monroe's and Jay's services commenced nearly simultaneously. Monroe's commission was dated the 28th of May, and Jay's the 19th of April, 1794. Jay's Treaty was proclaimed the 29th of February, 1796. Monroe was not recalled until the 22d of the following August,² but the angry correspondence which preceded his recall³ may be said to have been caused by a radical difference of opinion respecting his colleague's mission to London.

Whatever may have been the feeling toward Monroe's predecessor, he himself was well received. The Committee of Public Safety welcomed him "with the most distinguished marks of affection," and offered him a house, which offer he declined.⁴ He remained in relations of personal good-will with the different Governments of France, and did not fail to urge in his correspondence with the Secretary of State the policy of settling the differences with Great Britain by an alliance with France;⁵ nor did he conceal those opinions from the Government to which he was accredited.⁶ While the relations between Great Britain and the United States were balancing themselves in London on the issue of Jay's Treaty, those between the United States and France were held in like suspense in Paris.

Monroe endeavored to obtain from Jay a knowledge of the negotiations and a copy of the Treaty. Jay refused to communicate information, except in confidence, and Monroe declined to receive it unless he should be at liberty to communicate it to the French Government.⁷ A copy was, however, officially communicated to the French Minister at Washington.⁸ When the fate of that Treaty was ensured, the directory at first resolved (and so informed Monroe) to consider the alliance at an end, but they gave no formal notice to that effect.⁹ In

¹ 1 F. R. F., 694.

² *Ib.*, 741.

³ *Ib.*, 658-741.

⁴ *Ib.*, 675.

⁵ See, among others, his letters in 1 F. R. F. of Nov. 20, 1794, 685; Dec. 2, 1794, 687; Jan. 13, 1795, 691; Feb. 12, 1795, 694; and March 17, 1795, 700.

⁶ *Ib.*, 700.

⁷ *Ib.*, 517, 691, 700.

⁸ *Ib.*, 594.

⁹ *Ib.*, 730.

lieu of that they lodged with him, on the 11th of March, 1796, a summary exposition of the complaints of the French Government against the Government of the United States, namely, (1.) That the United States Courts took jurisdiction over French Prizes, in violation of the Treaty of 1778. (2.) That British men-of-war were admitted into American ports in violation of the same article. (3.) That the United States had failed to empower any one to enforce consular judgments, which was alleged to be a violation of the Convention of 1788. (4.) That the Captain of the "Cassius" had been arrested in Philadelphia for an offense committed on the high seas. (5.) That an outrage had been committed on the effects of the French Minister within the waters of the United States. (6.) That by Jay's Treaty the number of articles contraband of war, which a neutral might not carry, had been increased above the list specified in the treaties with France, which was a favor to England. (7.) That provisions had been recognized in Jay's Treaty as an article contraband of war.¹

On the 2d of July, 1796, the directory decreed that all neutral or allied powers should, without delay, be notified that the flag of the French Republic would treat neutral vessels, either as to confiscation, or to searches, or capture, in the same manner as they shall suffer the English to treat them.² Garden says that a second decree relating to the same object was made on the 16th of the same month, and that neither decree has been printed. The translation of the first one is printed among the American documents cited above, as also the translation of a note transmitting it to Monroe.³ Garden refers to Rondonneau, *Répertoire général de la Législation française*, Vol. II, p. 311, for the text of the second.⁴

Pickering, the successor of Randolph, noticed the complaints of the French Government in elaborate instructions to Pinckney, Monroe's successor, on the 16th of January, 1797.⁵ His replies were in substance, (1.) That the courts had taken jurisdiction over no prizes, except when they were alleged to have been made in violation of the obligations of the United States as a neutral, and that the cases in which interference had taken place were few in number and insignifi-

¹ F. R. F., 732-3.

² *Ib.*, 577.

³ *Ib.*, 739.

⁴ Garden, *Traité de Paix*, 112, note.

⁵ F. R. F., 559.

cant. (2.) That it was no violation of the Treaty with France to admit British ships of war into American ports, provided British privateers and prizes were excluded. (3.) That there was no Treaty obligation upon officers of the United States to enforce French consular judgments, and that the clause referred to was exceptional and ought not to be enlarged by construction. (4.) The facts respecting the "Cassius" were stated in order to show that no offense had been committed. (5.) That the executive had taken as efficacious measures as it could to obtain satisfaction for the outrage upon Fauchet. (6.) That the United States would gladly have put the definition of contraband on the same basis in its Treaties with both countries; but that Great Britain would not consent, and an independent arrangement had been made which did not affect the other Treaty arrangement made with France. (7.) That the stipulation as to provisions, without admitting the principle that provisions were contraband, would tend to promote adventures in that article to France.

A correspondence respecting the same subject had also taken place at Washington, in which the same complaints of the directory were repeated and other complaints were urged.¹ To the latter Pickering responded thus, in the same note in which he noticed the complaints which had been made in Paris: (1.) *Charge*.—That the negotiation at London had been "enveloped from its origin in the shadow of mystery, and covered with the veil of dissimulation."² *Reply*.—"To whom was our Government bound to unveil it? To France or to her Minister? * Did we stipulate to submit the exercise of our sovereignty * * to the direction of the Government of France? Let the Treaty itself furnish an answer."³ (2.) *Charge*.—That the Government of the United States had made an insidious proclamation of neutrality. *Reply*.—That "this proclamation received the pointed approbation of Congress," and "of the great body of the citizens of the United States." (3.) *Charge*.—That the United States "suffered England, by insulting its neutrality, to interrupt its commerce with France." *Reply*.—That a satisfaction had been demanded and obtained in a peaceable manner—by Treaty, and not by war. (4.) *Charge*.—That they "allowed the French colonies to be declared in a state of blockade." *Reply*.—That the United States, as a neutral, could only ques-

¹ F. R. F., 579.

² *Ib.*, 581.

³ *Ib.*, 561.

tion the sufficiency of a blockade, and that they would do so when facts should warrant it. (5.) *Charge*.—That the United States eluded advances for renewing the Treaties of commerce. *Reply*.—That Genet was the first French Minister who had been empowered to treat on those subjects, and the reasons for not treating with him were well known; that his successor, Fauchet, had not been so empowered, and that the United States had always been ready to negotiate with Adet, and all obstacles had come from him since the ratification of Jay's Treaty. (6.) *Charge*.—That the United States were guilty of ingratitude towards France. *Reply*.—That the United States, appreciating their obligations to France, had done something themselves towards the achievement of their independence; that, "of all the loans received from France in the American war, amounting nearly to 53,000,000 livres, the United States under their late Government had been enabled to pay but 2,500,000 livres; that the present Government, after paying up the arrearages and installments mentioned by Mr. Jefferson, had been continually anticipating the subsequent installments until, in the year 1795, the whole of our debt to France was discharged by the payment of 11,500,000 livres, no part of which would have become due until September 2, 1796, and then only 1,500,000, the residue at subsequent periods, the last not until 1802." (7.) *Charge*.—That English vessels were impressing American seamen. *Reply*.—That this concerned the Government of the United States only; and that as an independent nation they are not obliged to account to any other power respecting the measures which they judge proper to take in order to protect their own citizens. Other less important points were discussed, as will be seen by referring to the correspondence.

The course of the French was giving rise to many claims—for spoliations and maltreatment of vessels at sea, for losses by the embargo at Bordeaux, for the non-payment of drafts drawn by the colonial administrations, for the seizure of cargoes of vessels, for non-performance of contracts by government agents, for condemnation of vessels and their cargoes in violation of the provisions of the Treaties of 1778, and for captures under the decree of May 9, 1793. Skipwith, the Consul-General of the United States in France, was directed to examine into and report upon these claims; his report was made on the 20th November, 1795.¹

¹ F. R. F., 753-758.

On the 9th of September, 1796, Charles Cotesworth Pinckney was sent out to replace Monroe, with a letter from the Secretary of State, saying: "The claims of the American merchants on the French Republic are of great extent, and they are waiting the issue of them, through the public agents, with much impatience. Mr. Pinckney is particularly charged to look into this business, in which the serious interests, and, in some cases, nearly the whole fortunes of our citizens are involved."¹ But the directory, early in October, 1793, recalled their Minister from the United States.² Before Pinckney could arrive in France, they, "in order to strike a mortal blow, at the same moment, to British industry and the profitable trade of Americans in France, promulgated the famous law of the 10th Brumaire, year 5 (31st October, 1796), whereby the importation of manufactured articles, whether of English make or of English commerce, was prohibited both by land and sea throughout the French Republic";³ and, on his arrival, they informed Monroe that the directory would no longer recognize or receive a Minister Plenipotentiary from the United States, until after a reparation of the grievances demanded of the American Government, and which the French Republic has a right to expect."⁴

Pinckney was thereupon ordered to quit France under circumstances of great indignity,⁵ and Monroe took his formal leave on the 30th December, 1796. In reply to his speech at that time, the president of the directory said: "By presenting, this day, to the Executive Directory your letters of recall, you offer a very strange spectacle to Europe. France, rich in her freedom, surrounded by the train of her victories, and strong in the esteem of her allies, will not stoop to calculate the consequences of the condescension of the American Government to the wishes of its ancient tyrants. The French Republic expects, however, that the successors of Columbus, Raleigh, and Penn, always proud of their liberty, will never forget that they owe it to France. They will weigh, in their wisdom, the magnanimous friendship of the French people with the crafty caresses of perfidious men, who meditate to bring them again under their former yoke. Assure the good people of America, Mr. Minister, that, like them, we adore

¹ F. R. F., 742.

² *Ib.*, 745.

³ 6 Garden, *Traité de Paix*, 117.

⁴ F. R. F., 746.

⁵ *Ib.*, 710.

liberty; that they will always possess our esteem, and find in the French people that republican generosity which knows how to grant peace as well as to cause its sovereignty to be respected."¹

The moment this speech was concluded, the directory, accompanied by the Diplomatic Corps, passed into the audience-hall to receive from an Aide-de-Camp of Bonaparte the four Austrian colors taken at the battle of Arcola.² The Diplomatic Corps may, therefore, be presumed to have witnessed this indignity.

A French writer of authority thus characterizes these incidents: "Ainsi ce gouvernement prétendait que les États-unis accédassent à ses demandes sans examen, sans discussion préalable; à cet outrage, le gouvernement français en ajouta un autre: lorsque M. Monroe prit publiquement congé du directoire exécutif, Barras, qui en était le président, lui adressa un discours rempli d'expressions qui durent choquer les Américains."³

In closing the sketch of what took place during the administration of President Washington, it only remains to say that in addition to the acts of the 2d of July and the 31st of October, 1796, already referred to, the Executive Directory, on the 2d of March, 1797, decreed that all neutral ships with enemy's property on board might be captured; that enemy's property in neutral bottoms might be confiscated; that the Treaty of 1778 with the United States should be modified by the operation of the favored nation clause, so as to conform to Jay's Treaty, in the following respects: (1) That property in American bottoms not proved to be neutral should be confiscated; (2) That the list of contraband of war should be made to conform to Jay's Treaty; (3) That Americans taking a commission against France should be treated as pirates: and that every American ship should be good prize which should not have on board a crew-list in the form prescribed by the model annexed to the Treaty of 1778, the observance of which was required by the 25th and 27th Articles.⁴ The 25th Article made provision for a passport, and for a certificate of cargo. The 27th

¹ F. R. F., 747.

² *Rédacteur*, No. 382, Jan. 1, 1797.

³ *Garden, Traité de Paix*, 118. "Thus this government pretended that the United States should accede to its demands without examination, without discussion. To this outrage the French Government added another: While Mr. Monroe took public leave of the Executive Directory, Barras, who was the president, made him a speech full of expressions calculated to shock the Americans."

⁴ F. R. F., 31.

Article took notice only of the passport; and the model of the passport only was annexed to the Treaty. The Treaty required that the passport should express the name, property, and bulk of the ship, and the name and place of habitation of the master, but it made no provision respecting the crew-list. After the adoption of the Constitution, Congress, by general laws, made provision for national official documents, for proof of, among other things, the facts referred to in the 25th and 27th Articles of the Treaty with France. The name of the ship was to be painted on her stern, and to be shown in the Register;¹ her ownership was to be proved on oath, and be stated in the Register,² and her tonnage was to be stated in the same instrument, as the result of our official survey.³ Equally cogent laws were made to ensure an accurate crew-list.⁴ It is probable, therefore, that when the decree of March 2, 1797, was made, there was not an American ship afloat with the required document; and it is equally probable that the French Government, which, with the whole civilized world, had acquiesced in the sufficiency of the new national system, knew that to be the fact. The decree was, therefore, equivalent in its operation to a declaration of maritime war against American commerce. The United States had at that time no navy against which such a war could be carried on.

The difficulties in dealing with these questions were increased by the attitude of other foreign powers. The Batavian Republic besought the United States Minister to represent to his Government "how useful it would be to the interests of the inhabitants of the two republics, that the United States should at last seriously take to heart the numberless insults daily committed on their flag by the English";⁵ and the Spanish Minister at Philadelphia formally remonstrated against the British Treaty of 1794 as a violation of a Treaty with Spain concluded a year later, because it did not make the neutral flag secure the goods; because it extended the list of contraband; and because it assumed that Great Britain had the right of navigation of the Mississippi.⁶

President Adams, in his speech at the opening of the first session of the Fifth Congress (May 16, 1797), said: "With this conduct of

¹ St. at L., 288.

² *Ib.*, 289.

³ *Ib.*, 290; see also *Ib.*, 55, *et seq.*

⁴ *Ib.*, 31.

⁵ F. R. F., 13.

⁶ *Ib.*, 14.

the French Government it will be proper to take into view the public audience given to the late minister of the United States, on his taking leave of the Executive Directory. The speech of the President discloses sentiments more alarming than the refusal of a minister, because more dangerous to our independence and union, and at the same time studiously marked with indignities towards the Government of the United States. It evinces a disposition to separate the people of the United States from the Government; to persuade them that they have different affections, principles, and interests from those of their fellow-citizens whom they themselves have chosen to manage their common concerns; and thus, to produce divisions fatal to our peace. Such attempts ought to be repelled with a decision which shall convince France and the world that we are not a degraded people, humiliated under a colonial spirit of fear and sense of inferiority, fitted to be the miserable instruments of foreign influence, and regardless of national honor, character, and interest. * * *

"The diplomatic intercourse between the United States and France being at present suspended, the Government has no means of obtaining official information from that country; nevertheless there is reason to believe that the Executive Directory passed a decree on the 2d of March last, contravening, in part, the treaty of amity and commerce of 1778, injurious to our lawful commerce, and endangering the lives of our citizens. A copy of this treaty will be laid before you.

"While we are endeavoring to adjust all of our differences with France, by amicable negotiation, the progress of the war in Europe, the depredations on our commerce, the personal injuries to our citizens, and general complexion of affairs, render it my indispensable duty to recommend to your consideration effectual measures of defence.¹

"It is impossible to conceal from ourselves, or the world, what has been before observed, that endeavors have been employed to foster and establish a division between the government and people of the United States. To investigate the causes which have encouraged this attempt is not necessary. But to repel, by decided and united counsels, insinuations so derogatory to the honor, and aggression so dangerous to the Constitution, union, and even independence of the nation, is an indispensable duty."²

The answer of the House to this speech was in a conciliatory spirit;

¹Annals 5th Cong., 55.

²Ib., 59.

and on the first of the following June Congress yielded so far as to pass a law providing for passports for ships and vessels of the United States.¹

Congress adjourned on the 10th of July. On the 13th President Adams commissioned Charles Cotesworth Pinckney, John Marshall, and Elbridge Gerry as Envoys to proceed to France and endeavor to renew the relations which had been so rudely broken by the Directory. Their instructions will be found in the 2d volume of the *Folio Foreign Relations*, pages 153, *et seq.* Among other matters they were to secure an adjustment of the claims for spoliations of citizens of the United States, by this time amounting to many millions of dollars.

They arrived in Paris on the evening of the 4th of October, 1797,² and at once notified the Foreign Minister of their presence and requested an interview. Instead of receiving them, three gentlemen, who have become known in history as X, Y, and Z, waited upon them at various times, sometimes singly and sometimes together, and claimed to speak for Talleyrand and the Directory. They told the Envoys that they must pay money, "a great deal of money";³ and when they were asked how much, they replied "fifty thousand pounds sterling"⁴ as a *douceur* to the Directory, and a loan to France of thirty-two millions of Dutch florins. They said that the passages in the President's speech, which are quoted above, had offended the Directory, and must be retracted, and they urged upon the commissioners in repeated interviews the necessity of opening the negotiations by proposals to that effect.⁵

The American commissioners listened to their statements, and after consultation determined that they "should hold no more indirect intercourse with the Government."⁶ They addressed a letter to Talleyrand on the 11th of November, informing him that they were ready to negotiate.⁷ They got no answer; but on the 14th of December, X appeared again,⁸ on the 17th Y appeared,⁹ and on the 20th "a lady, who is well

¹ St. at L., 489.

² F. R. F., 157.

³ *Ib.*, 159.

⁴ *Ib.*

⁵ *Ib.*, 158-168.

⁶ *Ib.*, 164.

⁷ *Ib.*, 166.

⁸ *Ib.*

⁹ *Ib.*, 177.

acquainted with M. Talleyrand," talked to Pinckney on the subject;¹ still they got no answer from Talleyrand, and on the 18th of January they read the announcement of a decree that every vessel found at sea loaded with merchandise the production of England should be good prize.² Though unrecognized, they addressed an elaborate letter on the 27th of January, 1798, to Talleyrand, setting forth in detail and with great ability the grievances of the United States.³ On the 2d of March, they had an interview with him. He repeated that the Directory had taken offense at Mr. Adams's speech, and added that they had been wounded by the last speech of President Washington. He complained that the Envoys had not been to see him personally; and he urged that they should propose a loan to France.⁴ Pinckney said that the propositions seemed to be those made by X and Y. The Envoys then said that they had no power to agree to make such a loan. On the 18th of March, Talleyrand transmitted his reply to their note. He dwelt upon Jay's Treaty as the principal grievance of France. He says "he will content himself with observing, summarily, that in this Treaty everything having been calculated to turn the neutrality of the United States to the disadvantage of the French Republic, and to the advantage of England; that the Federal Government having in this act made to Great Britain concessions the most unheard of, the most incompatible with the interests of the United States, the most derogatory to the alliance which subsisted between the said States and the French Republic, the latter was perfectly free, in order to avoid the inconveniences of the Treaty of London, to avail itself of the preservative means with which the law of nature, the laws of nations, and prior treaties furnish it." He closed by stating "that notwithstanding the kind of prejudice which has been entertained with respect to them, the Executive Directory is disposed to treat with that one of the three whose opinions, presumed to be more impartial, promise, in the course of the explanation, more of that reciprocal confidence which is indispensable."⁵

Gerry was the member referred to. The three Envoys answered

¹2 F. R. F., 167.

²1 F. R. F., 182.

³Ib., 169.

⁴Ib., 186.

⁵Ib., 190-191.

that no one of the three was authorized to take the negotiation upon himself.¹ Pinckney and Marshall then left Paris. Gerry remained. Talleyrand tried to induce him to enter into negotiations for a loan to France, but he refused.² Before he left Paris, a mail arrived from America bringing printed copies of the despatches of the Envoys, with accounts of their interviews with X, Y, and Z and "the lady." Talleyrand at once asked Gerry for the four names.³ Gerry gave him the name of Y, Mr. Bellamy, and Z, Mr. Hautval, and said that he could not give the lady's name, and would not give X's name. The name of X is preserved in the Department of State. Gerry left Paris on the 26th July, 1798.

The President transmitted to Congress the reports of the Envoys as fast as they were received; and when he heard of Marshall's arrival in America he said to Congress, "I will never send another Minister to France without assurances that he will be received, respected, and honored as the representative of a great, free, powerful, and independent nation."⁴ The statutes of the United States show the impression which the news made upon Congress. The "Act to provide an additional armament for the further protection of the trade of the United States, and for other purposes,"⁵ is the first of a series of acts. It was passed in the House amid great excitement. Edward Livingston, who closed the debate on the part of the opposition, said: "Let no man flatter himself that the vote which has been given is not a declaration of war. Gentlemen know that this is the case."⁶ This was followed in the course of a few weeks by acts for organizing a Navy Department;⁷ for increasing or regulating the Army;⁸ for purchasing arms;⁹ for construction of vessels;¹⁰ for authorizing the cap-

¹1 F. R. F., 199.

²Ib., 204-238.

³Ib., 210.

⁴Ib., 199.

⁵1 St. at L., 552.

⁶2 Annals 5th Cong., 1519.

⁷1 St. at L., 553.

⁸Ib., 552, 558, 604.

⁹Ib., 555, 576.

¹⁰Ib., 556, 569, 608.

ture of French vessels;¹ for suspending all intercourse with France;² for authorizing merchant-vessels to protect themselves;³ for abrogating the Treaties with France;⁴ for establishing a Marine Corps;⁵ and for authorizing the borrowing of money.⁶ In the next session of Congress further augmentation of the Navy⁷ and of the Army⁸ was made; the suspension of intercourse was prolonged,⁹ and provisions were made for restoring captured French citizens,¹⁰ and for retaliations in case of death from impressments.¹¹

Washington was made Lieutenant-General and Commander-in-Chief of the Army, and, in accepting, said: "The conduct of the Directory of France towards our country; their insidious hostility to its Government; their various practices to withdraw the affections of the people from it; the evident tendency of their acts and those of their agents to countenance and invigorate opposition; their disregard of solemn treaties and the law of nations; their war upon our defenceless commerce; their treatment of our Ministers of peace; and their demands, amounting to tribute, could not fail to excite in me corresponding sentiments with those my countrymen have so generally expressed in affectionate addresses to you."¹²

The Attorney-General gave an opinion that a maritime war existed between France and the United States, authorized by both nations,¹³ but Congress never made the constitutional declaration of war, nor was such a declaration made on the other side.

It was on the 21st of June that President Adams informed Congress of the terms on which alone he would be willing to send a new Minister to France. Talleyrand immediately opened indirect means of communication with the American Cabinet through Murray, the American Minister at The Hague,¹⁴ and on the 28th of September he sent word

¹¹ St. at L., 561, 578.

²Ib., 565.

³Ib., 572.

⁴Ib., 578.

⁵Ib., 594.

⁶Ib., 607.

⁷Ib., 621.

⁸Ib., 725.

⁹Ib., 613.

¹⁰Ib., 624.

¹¹Ib., 743.

¹²Annals 5th Cong., 622.

¹³1 Op. At.-Gen., 84, Lee.

¹⁴2 F. R. F., 241.

through Pichon, the French Secretary of Legation at the same place, that "whatever plenipotentiary the Government of the United States might send to France in order to terminate the existing differences between the two countries, he would be undoubtedly received with the respect due to the representative of a free, independent and powerful nation.¹ To this proffer, embodying the language of the President's message to Congress, the President replied by empowering Chief-Justice Ellsworth, Mr. Davie, and Mr. Murray "to discuss and settle, by a Treaty, all controversies between the United States and France."²

When these Envoys arrived in France they found that the Directory had been overthrown,³ and they had to deal with Bonaparte as first Consul. They succeeded in restoring good relations. An account of their negotiations will be found in the 2d volume of the Folio Edition of the Foreign Relations, pages 307 to 345. Their instructions required them to secure, (1) A claims commission. (2) Abrogation of the old treaties. (3) Abolition of the guarantee of 1778. (4) No agreement for a loan. (5) No engagements inconsistent with prior Treaties, meaning doubtless Jay's Treaty. (6) No renewal of the peculiar jurisdiction conferred on consuls by the convention of 1788. (7) Duration of a Treaty not to exceed twelve years.⁴

The negotiators exchanged their powers on the 7th of April, 1800,⁵ and concluded a treaty on the 30th of the following September, which (1) declared that the parties could not agree upon the indemnities; (2) nor as to the old treaties; (3) and consequently was silent respecting the guarantee; but (4) made no provisions for a loan; (5) made no engagements inconsistent with prior treaties; (6) did not renew the objectionable consular provisions; and (7) no limitation was set to its operation.

When it was submitted to the Senate that body advised its ratification, provided the second article concerning indemnities should be expunged, and that the convention should be in force for eight years from the date of the exchange of the ratifications. The French Government assented to the limitation of the duration of the Treaty, and to the expunging of the 2d article, upon condition that it should be

¹2 F. R. F., 242.

²Ib., 243.

³Ib., 307.

⁴Ib., 306.

⁵Ib., 313-14.

understood that thereby each party renounced the pretensions which were the objects of the article; which was assented to by the Senate.¹

On the day following the signature of this Treaty in Paris (Sept. 30, 1800), a secret treaty was concluded at St. Ildefonso between France and Spain, which came to be of importance to the United States. This was the Treaty by which Louisiana was restored to France. In consideration of the elevation of the Duke of Parma to the rank of King, and the enlargement of his territory, it was agreed that "Sa Majesté Catholique donnera les ordres nécessaires pour que la France occupe la Louisiane au moment où S. A. R. le duc de Parme sera mise en possession de ses nouveaux Etats."²

The United States were anxious concerning the effect of this upon their future.³ But the failure of the Treaty of Amiens to restore a permanent peace induced Napoleon to determine to transfer all the Louisianas to the United States. He consulted Berthier and Marbois. The conference lasted far into the night. Berthier opposed the cession. Marbois favored it. Early the next morning he called Marbois to him and said, "Je nonce à la Louisiane. Ce n'est point seulement la Nouvelle-Orléans que je veux céder; c'est toute la colonie sans en rien réserver."⁴

The interview took place on the 10th of April;⁵ the decision was made on the morning of the 11th. On the afternoon of the same day the negotiations opened by an abrupt question from Talleyrand to Livingston whether the United States wished for the whole of Louisiana. Livingston, who had been instructed only to negotiate for New Orleans, and the Mississippi as a boundary line,⁶ said, "No, we only want New Orleans and the Floridas."⁷ But he soon found that he was dealing with a much larger question, and Monroe arrived the same day from America with fresh instructions to aid in its disposition. Napoleon empowered Marbois to negotiate for France, and instructed him to consent to the transfer, provided he could secure 50,000,000

¹2 F. R. F., 344.

²8 Garden, *Traité de Paix*, 48; S. Doc. 56, 2d Sess. 23d Cong. "His Catholic Majesty will give the necessary orders so that France may occupy Louisiana the moment when His Royal Highness the Duke of Parma shall be put in possession of his new State."

³2 F. R. F., 552.

⁴8 Garden, *Traité de Paix*, 64. "I renounce Louisiana. It is not New Orleans only that I wish to cede; it is all the colony, reserving nothing."

⁵8 Garden, *Traité de Paix*, 54.

⁶6 F. R. F., 162, No. 460.

⁷2 F. R. F., 552.

francs. He did secure 80,000,000, twenty millions of which were to be applicable to the extinguishment of claims against France, and sixty millions were payable in cash to France. When it was concluded, Napoleon said: "Cette accession de territoire, affermit pour toujours la puissance des Etats-Unis, et je viens de donner à l'Angleterre un rival maritime, qui tôt ou tard abaissera son orgueil."¹

Between the conclusion of the two Treaties of 1800 and 1803 a correspondence arose respecting the construction of the former Treaty.² Robert Livingston, the Minister of the United States, complained that the Council of Prizes (which he regarded "as a political board")³ was proceeding in violation of the provisions of the Treaty. On the 26th of January, 1802, he was "almost hopeless" as to the claims.⁴ His anxiety communicated itself to Madison.⁵ The French Court next proposed to meet the French obligation in paper money,⁶ while the appropriations on the American side were payable in coin.⁷ Livingston thought Bonaparte stood in the way, and that, should anything happen to him, France would "very soon be able to look all demands in the face."⁸ Monroe was sent out to aid in the negotiations, with special powers as to New Orleans and the Floridas.⁹ He arrived just in time to find the First Consul bent on parting with Louisiana and settling with the United States. On the 9th of March, 1803, Talleyrand was already giving signs of yielding. He expressed surprise at the amount of the American claims advanced by Livingston (20,000,000 francs), but avowed his purpose of paying them, whatever they might be, and asked for a specified statement.¹⁰ An explanation, which may account for part of this, may be found in two dates. The peace of Amiens was signed the 25th of March, 1802; the declaration of the renewal of the war was dated the 18th of May, 1803.

¹8 Garden, *Traité de Paix*, 88. "This accession of territory consolidates forever the power of the United States, and I have just given to England a maritime rival who sooner or later will humble her pride."

²6 F. R. F., 154-168.

³Ib., 156.

⁴Ib.

⁵Ib., 158.

⁶Ib., 161.

⁷Ib., 162.

⁸Ib., 163.

⁹Ib., 166.

¹⁰Ib., 167-168.

The Convention of 1800, after providing for the restoration of certain captured property, contained a provision that the debts contracted by one of the two nations with individuals of the other should be paid,¹ but that this clause should not extend to indemnities claimed on account of captures or condemnations. The Convention of 1803 stipulated that these debts, with interest at six per cent., should not exceed twenty millions of francs.

To entitle a claimant to participate in this fund, it was necessary: 1. That he should be a citizen of the United States who had been, and was at the time of the signing of the Treaty, a creditor of France, and who had no established house of commerce in France, England, or other country than the United States, in partnership with foreigners; 2. That, if the claim were for a debt, it should have been contracted for supplies before the 30th of September, 1800, and should have been claimed of the actual Government of France before the 30th of April, 1803; 3. That, if for prizes, it should not be for a prize whose condemnation had been or should be confirmed; 4. That, if for captures, it should not be a case in which the council of prizes had ordered restitution, or in which the claimant could not have had recourse to the government of the French Republic, or where the captors were sufficient; 5. That it should either be for supplies, for embargoes, or for prizes made at sea, in which the appeal had been properly lodged within the time mentioned in the Convention of 1800.

The distribution of this money gave rise to some sharp correspondence.² The claims which were excluded from participation in the distribution have become known as the "French Spoliation Claims." They have been often the subject of Congressional discussion and report.³

¹Art. 5.

²6 F. R. F., 182-207.

³See particularly 5 F. R. F., 314, 352, and 6 F. R. F., 3-207, 558, 1121, and S. R. 10, 2d Sess. 41st Cong., and the various authorities there cited; also, among others, an elaborate debate in the Senate, 11 Debates, 2d Sess. 23d Cong. [H. R., 445, 25th C

Extracts from Messages of President Adams, and Replies of the
Senate and House

SPECIAL SESSION MESSAGE ¹

UNITED STATES, May 16, 1797.

Gentlemen of the Senate and Gentlemen of the House of Representatives:

The personal inconveniences to the members of the Senate and of the House of Representatives in leaving their families and private affairs at this season of the year are so obvious that I the more regret the extraordinary occasion which has rendered the convention of Congress indispensable.

It would have afforded me the highest satisfaction to have been able to congratulate you on a restoration of peace to the nations of Europe whose animosities have endangered our tranquillity; but we have still abundant cause of gratitude to the Supreme Dispenser of National Blessings for general health and promising seasons, for domestic and social happiness, for the rapid progress and ample acquisitions of industry through extensive territories, for civil, political, and religious liberty. While other states are desolated with foreign war or convulsed with intestine divisions, the United States present the pleasing prospect of a nation governed by mild and equal laws, generally satisfied with the possession of their rights, neither envying the advantages nor fearing the power of other nations, solicitous only for the maintenance of order and justice and the preservation of liberty, increasing daily in their attachment to a system of government in proportion to their experience of its utility, yielding a ready and general obedience to laws flowing from the reason and resting on the only solid foundation—the affections of the people.

It is with extreme regret that I shall be obliged to turn your thoughts to other circumstances, which admonish us that some of these felicities may not be lasting. But if the tide of our prosperity is full and a reflux commencing, a vigilant circumspection becomes us, that we may meet out reverses with fortitude and extricate ourselves from their consequences with all the skill we possess and all the efforts in our power.

In giving to Congress information of the state of the Union and rec-

¹Richardson, Messages, vol. 1, p. 233.

ommending to their consideration such measures as appear to me to be necessary or expedient, according to my constitutional duty, the causes and the objects of the present extraordinary session will be explained.

After the President of the United States received information that the French Government had expressed serious discontents at some proceedings of the Government of these States said to affect the interests of France, he thought it expedient to send to that country a new minister, fully instructed to enter on such amicable discussions and to give such candid explanations as might happily remove the discontents and suspicions of the French Government and vindicate the conduct of the United States. For this purpose he selected from among his fellow-citizens a character whose integrity, talents, experience, and services had placed him in the rank of the most esteemed and respected in the nation. The direct object of his mission was expressed in his letter of credence to the French Republic, being "to maintain that good understanding which from the commencement of the alliance had subsisted between the two nations, and to efface unfavorable impressions, banish suspicions, and restore that cordiality which was at once the evidence and pledge of a friendly union." And his instructions were to the same effect, "faithfully to represent the disposition of the Government and people of the United States (their disposition being one), to remove jealousies and obviate complaints by shewing that they were groundless, to restore that mutual confidence which had been so unfortunately and injuriously impaired, and to explain the relative interests of both countries and the real sentiments of his own."

A minister thus specially commissioned it was expected would have proved the instrument of restoring mutual confidence between the two Republics. The first step of the French Government corresponded with that expectation. A few days before his arrival at Paris the French minister of foreign relations informed the American minister then resident at Paris of the formalities to be observed by himself in taking leave, and by his successor preparatory to his reception. These formalities they observed, and on the 9th of December presented officially to the minister of foreign relations, the one a copy of his letters of recall, the other a copy of his letters of credence.

These were laid before the Executive Directory. Two days afterwards the minister of foreign relations informed the recalled American minister that the Executive Directory had determined not to re-

ceive another minister plenipotentiary from the United States until after the redress of grievances demanded of the American Government, and which the French Republic had a right to expect from it. The American minister immediately endeavored to ascertain whether by refusing to receive him it was intended that he should retire from the territories of the French Republic, and verbal answers were given that such was the intention of the Directory. For his own justification he desired a written answer, but obtained none until toward the last of January, when, receiving notice in writing to quit the territories of the Republic, he proceeded to Amsterdam, where he proposed to wait for instruction from this Government. During his residence at Paris cards of hospitality were refused him, and he was threatened with being subjected to the jurisdiction of the minister of police; but with becoming firmness he insisted on the protection of the law of nations due to him as the known minister of a foreign power. You will derive further information from his dispatches, which will be laid before you.

As it is often necessary that nations should treat for the mutual advantage of their affairs, and especially to accommodate and terminate differences, and as they can treat only by ministers, the right of embassy is well known and established by the law and usage of nations. The refusal on the part of France to receive our minister is, then, the denial of a right; but the refusal to receive him until we have acceded to their demands without discussion and without investigation is to treat us neither as allies nor as friends, nor as a sovereign state.

With this conduct of the French Government it will be proper to take into view the public audience given to the late minister of the United States on his taking leave of the Executive Directory. The speech of the President discloses sentiments more alarming than the refusal of a minister, because more dangerous to our independence and union and at the same time studiously marked with indignities toward the Government of the United States. It evinces a disposition to separate the people of the United States from the Government, to persuade them that they have different affections, principles, and interests from those of their fellow-citizens whom they themselves have chosen to manage their common concerns, and thus to produce divisions fatal to our peace. Such attempts ought to be repelled with a decision which shall convince France and the world that we are not a degraded people, humiliated under a colonial spirit of fear and sense of inferiority,

fitted to be the miserable instruments of foreign influence, and regardless of national honor, character, and interest.

I should have been happy to have thrown a veil over these transactions if it had been possible to conceal them; but they have passed on the great theater of the world, in the face of all Europe and America, and with such circumstances of publicity and solemnity that they can not be disguised and will not soon be forgotten. They have inflicted a wound in the American breast. It is my sincere desire, however, that it may be healed.

It is my sincere desire, and in this I presume I concur with you and with our constituents, to preserve peace and friendship with all nations; and believing that neither the honor nor the interest of the United States absolutely forbid the repetition of advances for securing these desirable objects with France, I shall institute a fresh attempt at negotiation, and shall not fail to promote and accelerate an accommodation on terms compatible with the rights, duties, interests, and honor of the nation. If we have committed errors, and these can be demonstrated, we shall be willing to correct them; if we have done injuries, we shall be willing on conviction to redress them; and equal measures of justice we have a right to expect from France and every other nation.

The diplomatic intercourse between the United States and France being at present suspended, the Government has no means of obtaining official information from that country. Nevertheless, there is reason to believe that the Executive Directory passed a decree on the 2d of March last contravening in part the treaty of amity and commerce of 1778, injurious to our lawful commerce and endangering the lives of our citizens. A copy of this decree will be laid before you.

While we are endeavoring to adjust all our differences with France by amicable negotiation, the progress of the war in Europe, the depredations on our commerce, the personal injuries to our citizens, and the general complexion of affairs render it my indispensable duty to recommend to your consideration effectual measures of defense.

The commerce of the United States has become an interesting object of attention, whether we consider it in relation to the wealth and finances or the strength and resources of the nation. With a seacoast of near 2,000 miles in extent, opening a wide field for fisheries, navigation, and commerce, a great portion of our citizens naturally apply

their industry and enterprise to these objects. Any serious and permanent injury to commerce would not fail to produce the most embarrassing disorders. To prevent it from being undermined and destroyed it is essential that it receive an adequate protection.

The naval establishment must occur to every man who considers the injuries committed on our commerce, the insults offered to our citizens, and the description of vessels by which these abuses have been practiced. As the sufferings of our mercantile and seafaring citizens can not be ascribed to the omission of duties demandable, considering the neutral situation of our country, they are to be attributed to the hope of impunity arising from a supposed inability on our part to afford protection. To resist the consequences of such impressions on the minds of foreign nations and to guard against the degradation and servility which they must finally stamp on the American character is an important duty of Government.

A naval power, next to the militia, is the natural defense of the United States. The experience of the last war would be sufficient to shew that a moderate naval force, such as would be easily within the present abilities of the Union, would have been sufficient to have baffled many formidable transportations of troops from one State to another, which were then practiced. Our seacoasts, from their great extent, are more easily annoyed and more easily defended by a naval force than any other. With all the materials our country abounds; in skill our naval architects and navigators are equal to any, and commanders and seamen will not be wanting.

But although the establishment of a permanent system of naval defense appears to be requisite, I am sensible it can not be formed so speedily and extensively as the present crisis demands. Hitherto I have thought proper to prevent the sailing of armed vessels except on voyages to the East Indies, where general usage and the danger from pirates appeared to render the permission proper. Yet the restriction has originated solely from a wish to prevent collisions with the powers at war, contravening the act of Congress of June, 1794, and not from any doubt entertained by me of the policy and propriety of permitting our vessels to employ means of defense while engaged in a lawful foreign commerce. It remains for Congress to prescribe such regulations as will enable our seafaring citizens to defend themselves against violations of the law of nations, and at the same time restrain them

from committing acts of hostility against the powers at war. In addition to this voluntary provision for defense by individual citizens, it appears to me necessary to equip the frigates, and provide other vessels of inferior force, to take under convoy such merchant vessels as shall remain unarmed.

The greater part of the cruisers whose depredations have been most injurious have been built and some of them partially equipped in the United States. Although an effectual remedy may be attended with difficulty, yet I have thought it my duty to present the subject generally to your consideration. If a mode can be devised by the wisdom of Congress to prevent the resources of the United States from being converted into the means of annoying our trade, a great evil will be prevented. With the same view, I think it proper to mention that some of our citizens resident abroad have fitted out privateers, and others have voluntarily taken the command, or entered on board of them, and committed spoliations on the commerce of the United States. Such unnatural and iniquitous practices can be restrained only by severe punishments.

But besides a protection of our commerce on the seas, I think it highly necessary to protect it at home, where it is collected in our most important ports. The distance of the United States from Europe and the well-known promptitude, ardor, and courage of the people in defense of their country happily diminish the probability of invasion. Nevertheless, to guard against sudden and predatory incursions the situation of some of our principal seaports demands your consideration. And as our country is vulnerable in other interests besides those of its commerce, you will seriously deliberate whether the means of general defense ought not to be increased by an addition to the regular artillery and cavalry, and by arrangements for forming a provisional army.

With the same view, and as a measure which, even in a time of universal peace, ought not to be neglected, I recommend to your consideration a revision of the laws for organizing, arming, and disciplining the militia, to render that natural and safe defense of the country efficacious.

Although it is very true that we ought not to involve ourselves in the political system of Europe, but to keep ourselves always distinct and separate from it if we can, yet to effect this separation, early, punctual, and continual information of the current chain of events and

of the political projects in contemplation is no less necessary than if we were directly concerned in them. It is necessary, in order to the discovery of the efforts made to draw us into the vortex, in season to make preparations against them. However we may consider ourselves, the maritime and commercial powers of the world will consider the United States of America as forming a weight in that balance of power in Europe which never can be forgotten or neglected. It would not only be against our interest, but it would be doing wrong to one-half of Europe, at least, if we should voluntarily throw ourselves into either scale. It is a natural policy for a nation that studies to be neutral to consult with other nations engaged in the same studies and pursuits. At the same time that measures might be pursued with this view, our treaties with Prussia and Sweden, one of which is expired and the other near expiring, might be renewed.

Address of the Senate to John Adams, President of the United States¹

SIR: The Senate of the United States request you to accept their acknowledgments for the comprehensive and interesting detail you have given in your speech to both Houses of Congress on the existing state of the Union.

While we regret the necessity of the present meeting of the Legislature, we wish to express our entire approbation of your conduct in convening it on this momentous occasion.

The superintendence of our national faith, honor, and dignity being in a great measure constitutionally deposited with the Executive, we observe with singular satisfaction the vigilance, firmness, and promptitude exhibited by you in this critical state of our public affairs, and from thence derive an evidence and pledge of the rectitude and integrity of your Administration. And we are sensible it is an object of primary importance that each branch of the Government should adopt a language and system of conduct which shall be cool, just, and dispassionate, but firm, explicit, and decided.

We are equally desirous with you to preserve peace and friendship with all nations, and are happy to be informed that neither the honor nor interests of the United States forbid advances for securing those

¹Richardson, Messages, vol. 1, p. 239.

desirable objects by amicable negotiation with the French Republic. This method of adjusting national differences is not only the most mild, but the most rational and humane, and with governments disposed to be just can seldom fail of success when fairly, candidly, and sincerely used. If we have committed errors and can be made sensible of them, we agree with you in opinion that we ought to correct them, and compensate the injuries which may have been consequent thereon; and we trust the French Republic will be actuated by the same just and benevolent principles of national policy.

We do therefore most sincerely approve of your determination to promote and accelerate an accommodation of our existing differences with that Republic by negotiation, on terms compatible with the rights, duties, interests, and honor of our nation. And you may rest assured of our most cordial coöperation so far as it may become necessary in this pursuit.

Peace and harmony with all nations is our sincere wish; but such being the lot of humanity that nations will not always reciprocate peaceable dispositions, it is our firm belief that effectual measures of defense will tend to inspire that national self-respect and confidence at home which is the unfailing source of respectability abroad, to check aggression and prevent war.

While we are endeavoring to adjust our differences with the French Republic by amicable negotiation, the progress of the war in Europe, the depredations on our commerce, the personal injuries to our citizens, and the general complexion of affairs prove to us your vigilant care in recommending to our attention effectual measures of defense.

Those which you recommend, whether they relate to external defense by permitting our citizens to arm for the purpose of repelling aggressions on their commercial rights, and by providing sea convoys, or to internal defense by increasing the establishments of artillery and cavalry, by forming a provisional army, by revising the militia laws, and fortifying more completely our ports and harbors, will meet our consideration under the influence of the same just regard for the security, interest, and honor of our country which dictated your recommendation.

Practices so unnatural and iniquitous as those you state, of our own citizens converting their property and personal exertions into the means of annoying our trade and injuring their fellow-citizens, deserve legal severity commensurate with their turpitude.

Although the Senate believe that the prosperity and happiness of our country does not depend on general and extensive political connections with European nations, yet we can never lose sight of the propriety as well as necessity of enabling the Executive, by sufficient and liberal supplies, to maintain and even extend our foreign intercourse as exigencies may require, reposing full confidence in the Executive, in whom the Constitution has placed the powers of negotiation.

We learn with sincere concern that attempts are in operation to alienate the affections of our fellow-citizens from their Government. Attempts so wicked, wherever they exist, can not fail to excite our utmost abhorrence. A government chosen by the people for their own safety and happiness, and calculated to secure both, can not lose their affections so long as its administration pursues the principles upon which it was erected; and your resolution to observe a conduct just and impartial to all nations, a sacred regard to our national engagements, and not to impair the rights of our Government, contains principles which can not fail to secure to your Administration the support of the National Legislature to render abortive every attempt to excite dangerous jealousies among us, and to convince the world that our Government and your administration of it can not be separated from the affectionate support of every good citizen. And the Senate can not suffer the present occasion to pass without thus publicly and solemnly expressing their attachment to the Constitution and Government of their country; and as they hold themselves responsible to their constituents, their consciences, and their God, it is their determination by all their exertions to repel every attempt to alienate the affections of the people from the Government, so highly injurious to the honor, safety, and independence of the United States.

We are happy, since our sentiments on the subject are in perfect unison with yours, in this public manner to declare that we believe the conduct of the Government has been just and impartial to foreign nations, and that those internal regulations which have been established for the preservation of peace are in their nature proper and have been fairly executed.

And we are equally happy in possessing an entire confidence in your abilities and exertions in your station to maintain untarnished the honor, preserve the peace, and support the independence of our country, to acquire and establish which, in connection with your fellow-

citizens, has been the virtuous effort of a principal part of your life.

To aid you in these arduous and honorable exertions, as it is our duty so it shall be our faithful endeavor; and we flatter ourselves, sir, that the proceedings of the present session of Congress will manifest to the world that although the United States love peace, they will be independent; that they are sincere in their declarations to be just to the French and all other nations, and expect the same in return.

If a sense of justice, a love of moderation and peace, shall influence their councils, which we sincerely hope we shall have just grounds to expect, peace and amity between the United States and all nations will be preserved.

But if we are so unfortunate as to experience injuries from any foreign power, and the ordinary methods by which differences are amicably adjusted between nations shall be rejected, the determination "not to surrender in any manner the rights of the Government," being so inseparably connected with the dignity, interest, and independence of our country, shall by us be steadily and inviolably supported.

TH: JEFFERSON,

Vice-President of the United States and President of the Senate.

MAY 23, 1797.

Reply of the President¹

Mr. Vice-President and Gentlemen of the Senate:

It would be an affectation in me to dissemble the pleasure I feel on receiving this kind address.

My long experience of the wisdom, fortitude, and patriotism of the Senate of the United States enhances in my estimation the value of those obliging expressions of your approbation of my conduct, which are a generous reward for the past and an affecting encouragement to constancy and perseverance in future.

Our sentiments appear to be so entirely in unison that I can not but believe them to be the rational result of the understandings and the natural feelings of the hearts of Americans in general on contemplating the present state of the nation.

While such principles and affections prevail they will form an indissoluble bond of union and a sure pledge that our country has no

¹Richardson, Messages, vol. 1, p. 242.

essential injury to apprehend from any portentous appearances abroad. In a humble reliance on Divine Providence we may rest assured that while we reiterate with sincerity our endeavors to accommodate all our differences with France, the independence of our country can not be diminished, its dignity degraded, or its glory tarnished by any nation or combination of nations, whether friends or enemies.

JOHN ADAMS.

MAY 24, 1797.

*Address of the House of Representatives to John Adams, President of the United States*¹

SIR: The interesting details of those events which have rendered the convention of Congress at this time indispensable (communicated in your speech to both Houses) has excited in us the strongest emotions. Whilst we regret the occasion, we can not omit to testify our approbation of the measure, and pledge ourselves that no considerations of private inconvenience shall prevent on our part a faithful discharge of the duties to which we are called.

We have constantly hoped that the nations of Europe, whilst desolated by foreign wars or convulsed by intestine divisions, would have left the United States to enjoy that peace and tranquillity to which the impartial conduct of our Government has entitled us, and it is now with extreme regret we find the measures of the French Republic tending to endanger a situation so desirable and interesting to our country.

Upon this occasion we feel it our duty to express in the most explicit manner the sensations which the present crisis has excited, and to assure you of our zealous coöperation in those measures which may appear necessary for our security or peace.

Although it is the earnest wish of our hearts that peace may be maintained with the French Republic and with all the world, yet we never will surrender those rights which belong to us as a nation; and whilst we view with satisfaction the wisdom, dignity, and moderation which have marked the measures of the Supreme Executive of our country in his attempt to remove by candid explanations the complaints and jealousies of France, we feel the full force of that indignity which

¹Richardson, Messages, vol. 1, p. 242.

has been offered our country in the rejection of its minister. No attempts to wound our rights as a sovereign State will escape the notice of our constituents. They will be felt with indignation and repelled with that decision which shall convince the world that we are not a degraded people; that we can never submit to the demands of a foreign power without examination and without discussion.

Knowing as we do the confidence reposed by the people of the United States in their Government, we can not hesitate in expressing our indignation at any sentiments tending to derogate from that confidence. Such sentiments, wherever entertained, serve to evince an imperfect knowledge of the opinions of our constituents. An attempt to separate the people of the United States from their Government is an attempt to separate them from themselves; and although foreigners who know not the genius of our country may have conceived the project, and foreign emissaries may attempt the execution, yet the united efforts of our fellow-citizens will convince the world of its impracticability.

Sensibly as we feel the wound which has been inflicted by the transactions disclosed in your communications, yet we think with you that neither the honor nor the interest of the United States forbid the repetition of advances for preserving peace; we therefore receive with the utmost satisfaction your information that a fresh attempt at negotiation will be instituted, and we cherish the hope that a mutual spirit of conciliation, and a disposition on the part of France to compensate for any injuries which may have been committed upon our neutral rights, and on the part of the United States to place France on grounds similar to those of other countries in their relation and connection with us (if any inequalities shall be found to exist), will produce an accommodation compatible with the engagements, rights, duties, and honor of the United States. Fully, however, impressed with the uncertainty of the result, we shall prepare to meet with fortitude any unfavorable events which may occur, and to extricate ourselves from their consequences with all the skill we possess and all the efforts in our power. Believing with you that the conduct of the Government has been just and impartial to foreign nations, that the laws for the preservation of peace have been proper, and that they have been fairly executed, the Representatives of the people do not hesitate to declare that they will give their most cordial support to the execution of principles so deliberately and uprightly established.

The many interesting subjects which you have recommended to our consideration, and which are so strongly enforced by this momentous occasion, will receive every attention which their importance demands, and we trust that, by the decided and explicit conduct which will govern our deliberations, every insinuation will be repelled which is derogatory to the honor and independence of our country.

Permit us in offering this address to express our satisfaction at your promotion to the first office in the Government and our entire confidence that the preëminent talents and patriotism which have placed you in this distinguished situation will enable you to discharge its various duties with satisfaction to yourself and advantage to our common country.

JUNE 2, 1797.

Reply of the President¹

Mr. Speaker and Gentlemen of the House of Representatives:

I receive with great satisfaction your candid approbation of the convention of Congress, and thank you for your assurances that the interesting subjects recommended to your consideration shall receive the attention which their importance demands, and that your cooperation may be expected in those measures which may appear necessary for our security or peace.

The declarations of the Representatives of this nation of their satisfaction at my promotion to the first office in this Government and of their confidence in my sincere endeavors to discharge the various duties of it with advantage to our common country have excited my most grateful sensibility.

I pray you, gentlemen, to believe and to communicate such assurance to our constituents that no event which I can foresee to be attainable by any exertions in the discharge of my duties can afford me so much cordial satisfaction as to conduct a negotiation with the French Republic to a removal of prejudices, a correction of errors, a dissipation of umbrages, an accommodation of all differences, and a restoration of harmony and affection to the mutual satisfaction of both nations. And whenever the legitimate organs of intercourse shall be restored and the real sentiments of the two Governments can be candidly communicated

¹Richardson, Messages, vol. 1, p. 244.

to each other, although strongly impressed with the necessity of collecting ourselves into a manly posture of defense, I nevertheless entertain an encouraging confidence that a mutual spirit of conciliation, a disposition to compensate injuries and accommodate each other in all our relations and connections, will produce an agreement to a treaty consistent with the engagements, rights, duties, and honor of both nations.

JOHN ADAMS.

JUNE 3, 1797.

FIRST ANNUAL ADDRESS ¹

UNITED STATES, *November 22, 1797.*

*Gentlemen of the Senate and Gentlemen of the House of
Representatives:*

Although I can not yet congratulate you on the reestablishment of peace in Europe and the restoration of security to the persons and properties of our citizens from injustice and violence at sea, we have, nevertheless, abundant cause of gratitude to the source of benevolence and influence for interior tranquillity and personal security, for propitious seasons, prosperous agriculture, productive fisheries, and general improvements, and, above all, for a rational spirit of civil and religious liberty and a calm but steady determination to support our sovereignty, as well as our moral and our religious principles, against all open and secret attacks.

Our envoys extraordinary to the French Republic embarked—one in July, the other early in August—to join their colleague in Holland. I have received intelligence of the arrival of both of them in Holland, from whence they all proceeded on their journeys to Paris within a few days of the 19th of September. Whatever may be the result of this mission, I trust that nothing will have been omitted on my part to conduct the negotiation to a successful conclusion, on such equitable terms as may be compatible with the safety, honor, and interest of the United States. Nothing, in the meantime, will contribute so much to the preservation of peace and the attainment of justice as a manifestation of that energy and unanimity of which on many former occasions the people of the United States have given such memorable proofs.

¹Richardson, *Messages*, vol. 1, p. 250.

and the exertion of those resources for national defense which a beneficent Providence has kindly placed within their power.

It may be confidently asserted that nothing has occurred since the adjournment of Congress which renders inexpedient those precautionary measures recommended by me to the consideration of the two Houses at the opening of your late extraordinary session. If that system was then prudent, it is more so now, as increasing depredations strengthen the reasons for its adoption.

Indeed, whatever may be the issue of the negotiation with France, and whether the war in Europe is or is not to continue, I hold it most certain that permanent tranquillity and order will not soon be obtained. The state of society has so long been disturbed, the sense of moral and religious obligations so much weakened, public faith and national honor have been so impaired, respect to treaties has been so diminished, and the law of nations has lost so much of its force, while pride, ambition, avarice, and violence have been so long unrestrained, there remains no reasonable ground on which to raise an expectation that a commerce without protection or defense will not be plundered.

The commerce of the United States is essential, if not to their existence, at least to their comfort, their growth, prosperity, and happiness. The genius, character, and habits of the people are highly commercial. Their cities have been formed and exist upon commerce. Our agriculture, fisheries, arts, and manufactures are connected with and depend upon it. In short, commerce has made this country what it is, and it can not be destroyed or neglected without involving the people in poverty and distress. Great numbers are directly and solely supported by navigation. The faith of society is pledged for the preservation of the rights of commercial and seafaring no less than of the other citizens. Under this view of our affairs, I should hold myself guilty of a neglect of duty if I forbore to recommend that we should make every exertion to protect our commerce and to place our country in a suitable posture of defense as the only sure means of preserving both.

*Address of the Senate to John Adams, President of the United States*¹

THE PRESIDENT OF THE UNITED STATES:

It would have given us much pleasure to have received your con-

¹Richardson, Messages, vol. 1, p. 254.

gratulations on the reestablishment of peace in Europe and the restoration of security to the persons and property of our citizens from injustice and violence at sea; but though these events, so desirable to our country and the world, have not taken place, yet we have abundant cause of gratitude to the Great Disposer of Human Events for interior tranquillity and personal security, for propitious seasons, prosperous agriculture, productive fisheries, and general improvement, and, above all, for a rational spirit of civil and religious liberty and a calm but steady determination to support our sovereignty against all open and secret attacks.

We learn with satisfaction that our envoys extraordinary to the French Republic had safely arrived in Europe and were proceeding to the scene of negotiation, and whatever may be the result of the mission, we are perfectly satisfied that nothing on your part has been omitted which could in any way conduce to a successful conclusion of the negotiation upon terms compatible with the safety, honor, and interest of the United States; and we are fully convinced that in the meantime a manifestation of that unanimity and energy of which the people of the United States have given such memorable proofs and a proper exertion of those resources of national defense which we possess will essentially contribute to the preservation of peace and the attainment of justice.

We think, sir, with you that the commerce of the United States is essential to the growth, comfort, and prosperity of our country, and that the faith of society is pledged for the preservation of the rights of commercial and seafaring no less than of other citizens. And even if our negotiation with France should terminate favorably and the war in Europe cease, yet the state of society which unhappily prevails in so great a portion of the world and the experience of past times under better circumstances unite in warning us that a commerce so extensive and which holds out so many temptations to lawless plunderers can never be safe without protection; and we hold ourselves obliged by every tie of duty which binds us to our constituents to promote and concur in such measures of marine defense as may convince our merchants and seamen that their rights are not sacrificed nor their injuries forgotten.

Nov. 27, 1797.

Reply of the President¹

UNITED STATES, November 28, 1797.

Gentlemen of the Senate:

I thank you for this address.

When, after the most laborious investigation and serious reflection, without partial considerations or personal motives, measures have been adopted or recommended, I can receive no higher testimony of their rectitude than the approbation of an assembly so independent, patriotic, and enlightened as the Senate of the United States.

Nothing has afforded me more entire satisfaction than the coincidence of your judgment with mine in the opinion of the essential importance of our commerce and the absolute necessity of a maritime defense. What is it that has drawn to Europe the superfluous riches of the three other quarters of the globe but a marine? What is it that has drained the wealth of Europe itself into the coffers of two or three of its principal commercial powers but a marine?

The world has furnished no example of a flourishing commerce without a maritime protection, and a moderate knowledge of man and his history will convince anyone that no such prodigy ever can arise. A mercantile marine and a military marine must grow up together; one can not long exist without the other.

JOHN ADAMS.

Address of the House of Representatives to John Adams, President of the United States²

In lamenting the increase of the injuries offered to the persons and property of our citizens at sea we gratefully acknowledge the continuance of interior tranquillity and the attendant blessings of which you remind us as alleviations of these fatal effects of injustice and violence.

Whatever may be the result of the mission to the French Republic, your early and uniform attachment to the interest of our country, your important services in the struggle for its independence, and your unceasing exertions for its welfare afford no room to doubt of the sincerity of your efforts to conduct the negotiation to a successful conclusion on such terms as may be compatible with the safety, honor, and

¹Richardson, Messages, vol. 1, p. 256.

²Ibid., p. 257.

interest of the United States. We have also a firm reliance upon the energy and unanimity of the people of these States in the assertion of their rights, and on their determination to exert upon all proper occasions their ample resources in providing for the national defense.

The importance of commerce and its beneficial influence upon agriculture, arts, and manufactures have been verified in the growth and prosperity of our country. It is essentially connected with the other great interests of the community; they must flourish and decline together; and while the extension of our navigation and trade naturally excites the jealousy and tempts the avarice of other nations, we are firmly persuaded that the numerous and deserving class of citizens engaged in these pursuits and dependent on them for their subsistence has a strong and indisputable claim to our support and protection.

Nov. 28, 1797.

Reply of the President¹

UNITED STATES, November 29, 1797.

Gentlemen of the House of Representatives:

I receive this address from the House of Representatives of the United States with peculiar pleasure.

Your approbation of the meeting of Congress in this city and of those other measures of the Executive authority of Government communicated in my address to both Houses at the opening of the session afford me great satisfaction, as the strongest desire of my heart is to give satisfaction to the people and their Representatives by a faithful discharge of my duty.

The confidence you express in the sincerity of my endeavors and in the unanimity of the people does me much honor and gives me great joy.

I rejoice in that harmony which appears in the sentiments of all the branches of the Government on the importance of our commerce and our obligations to defend it, as well as in all the other subjects recommended to your consideration, and sincerely congratulate you and our fellow-citizens at large on this appearance, so auspicious to the honor, interest, and happiness of the nation.

¹Richardson, Messages, vol. 1, p. 258.

SECOND ANNUAL ADDRESS ¹

UNITED STATES, December 8, 1798.

*Gentlemen of the Senate and Gentlemen of the House of
Representatives:*

The course of the transactions in relation to the United States and France which have come to my knowledge during your recess will be made the subject of a future communication. That communication will confirm the ultimate failure of the measures which have been taken by the Government of the United States toward an amicable adjustment of differences with that power. You will at the same time perceive that the French Government appears solicitous to impress the opinion that it is averse to a rupture with this country, and that it has in a qualified manner declared itself willing to receive a minister from the United States for the purpose of restoring a good understanding. It is unfortunate for professions of this kind that they should be expressed in terms which may countenance the inadmissible pretension of a right to prescribe the qualifications which a minister from the United States should possess, and that while France is asserting the existence of a disposition on her part to conciliate with sincerity the differences which have arisen, the sincerity of a like disposition on the part of the United States, of which so many demonstrative proofs have been given, should even be indirectly questioned. It is also worthy of observation that the decree of the Directory alleged to be intended to restrain the depredations of French cruisers on our commerce has not given, and can not give, any relief. It enjoins them to conform to all the laws of France relative to cruising and prizes, while these laws are themselves the sources of the depredations of which we have so long, so justly, and so fruitlessly complained.

The law of France enacted in January last, which subjects to capture and condemnation neutral vessels and their cargoes if any portion of the latter are of British fabric or produce, although the entire property belong to neutrals, instead of being rescinded has lately received a confirmation by the failure of a proposition for its repeal. While this law, which is an unequivocal act of war on the commerce of the nations it attacks, continues in force those nations can see in the French Government only a power regardless of their essential rights, of their independence and sovereignty; and if they possess the means they can reconcile nothing with their interest and honor but a firm resistance.

¹Richardson, Messages, vol. 1, p. 271.

Hitherto, therefore, nothing is discoverable in the conduct of France which ought to change or relax our measures of defense. On the contrary, to extend and invigorate them is our true policy. We have no reason to regret that these measures have been thus far adopted and pursued, and in proportion as we enlarge our view of the portentous and incalculable situation of Europe we shall discover new and cogent motives for the full development of our energies and resources.

But in demonstrating by our conduct that we do not fear war in the necessary protection of our rights and honor we shall give no room to infer that we abandon the desire of peace. An efficient preparation for war can alone insure peace. It is peace that we have uniformly and perseveringly cultivated, and harmony between us and France may be restored at her option. But to send another minister without more determinate assurances that he would be received would be an act of humiliation to which the United States ought not to submit. It must therefore be left with France (if she is indeed desirous of accommodation) to take the requisite steps. The United States will steadily observe the maxims by which they have hither been governed. They will respect the sacred rights of embassy; and with a sincere disposition on the part of France to desist from hostility, to make reparation for the injuries heretofore inflicted on our commerce, and to do justice in future, there will be no obstacle to the restoration of a friendly intercourse. In making to you this declaration I give a pledge to France and the world that the Executive authority of this country still adheres to the humane and pacific policy which has invariably governed its proceedings, in conformity with the wishes of the other branches of the Government and of the people of the United States. But considering the late manifestations of her policy toward foreign nations, I deem it a duty deliberately and solemnly to declare my opinion that whether we negotiate with her or not, vigorous preparations for war will be alike indispensable. These alone will give to us an equal treaty and insure its observance.

Among the measures of preparation which appear expedient, I take the liberty to recall your attention to the naval establishment. The beneficial effects of the small naval armament provided under the acts of the last session are known and acknowledged. Perhaps no country ever experienced more sudden and remarkable advantages from any measure of policy than we have derived from the arming for our maritime protection and defense. We ought without loss of time to lay the

foundation for an increase of our Navy to a size sufficient to guard our coast and protect our trade. Such a naval force as it is doubtless in the power of the United States to create and maintain would also afford to them the best means of general defense by facilitating the safe transportation of troops and stores to every part of our extensive coast. To accomplish this important object, a prudent foresight requires that systematical measures be adopted for procuring at all times the requisite timber and other supplies. In what manner this shall be done I leave to your consideration.

*Address of the Senate to John Adams, President of the United States*¹

THE PRESIDENT OF THE UNITED STATES:

Although we have sincerely wished that an adjustment of our differences with the Republic of France might be effected on safe and honorable terms, yet the information you have given us of the ultimate failure of the negotiation has not surprised us. In the general conduct of that Republic we have seen a design of universal influence incompatible with the self-government and destructive of the independence of other States. In its conduct toward these United States we have seen a plan of hostility pursued with unremitted constancy, equally disregarding the obligations of treaties and the rights of individuals. We have seen two embassies, formed for the purpose of mutual explanations and clothed with the most extensive and liberal powers, dismissed without recognition and even without a hearing. The Government of France has not only refused to repeal but has recently enjoined the observance of its former edict respecting merchandise of British fabric or produce the property of neutrals, by which the interruption of our lawful commerce and the spoliation of the property of our citizens have again received a public sanction. These facts indicate no change of system or disposition; they speak a more intelligible language than professions of solicitude to avoid a rupture, however ardently made. But if, after the repeated proofs we have given of a sincere desire for peace, these professions should be accompanied by insinuations implicating the integrity with which it has been pursued; if, neglecting and passing by the constitutional and authorized agents of the Government, they are made through the medium of individuals without public

¹Richardson, Messages, vol. 1, p. 275.

character or authority, and, above all, if they carry with them a claim to prescribe the political qualifications of the minister of the United States to be employed in the negotiation, they are not entitled to attention or consideration, but ought to be regarded as designed to separate the people from their Government and to bring about by intrigue that which open force could not effect.

We are of opinion with you, sir, that there has nothing yet been discovered in the conduct of France which can justify a relaxation of the means of defense adopted during the last session of Congress, the happy result of which is so strongly and generally marked. If the force by sea and land which the existing laws authorize should be judged inadequate to the public defense, we will perform the indispensable duty of bringing forward such other acts as will effectually call forth the resources and force of our country.

A steady adherence to this wise and manly policy, a proper direction of the noble spirit of patriotism which has arisen in our country, and which ought to be cherished and invigorated by every branch of the Government, will secure our liberty and independence against all open and secret attacks.

We enter on the business of the present session with an anxious solicitude for the public good, and shall bestow that consideration on the several objects pointed out in your communication which they respectively merit.

Your long and important services, your talents and firmness, so often displayed in the most trying times and most critical situations, afford a sure pledge of a zealous coöperation in every measure necessary to secure us justice and respect,

JOHN LAURANCE,
President of the Senate pro tempore.

DECEMBER 11, 1798.

Reply of the President¹

December 12, 1798.

To the Senate of the United States:

GENTLEMEN: I thank you for this address, so conformable to the spirit of our Constitution and the established character of the Senate of the United States for wisdom, honor, and virtue.

¹Richardson, Messages, vol. 1, p. 277.

I have seen no real evidence of any change of system or disposition in the French Republic toward the United States. Although the officious interference of individuals without public character or authority is not entitled to any credit, yet it deserves to be considered whether that temerity and impertinence of individuals affecting to interfere in public affairs between France and the United States, whether by their secret correspondence or otherwise, and intended to impose upon the people and separate them from their Government, ought not to be inquired into and corrected.

I thank you, gentlemen, for your assurances that you will bestow that consideration on the several objects pointed out in my communication which they respectively merit.

If I have participated in that understanding, sincerity, and constancy which have been displayed by my fellow-citizens and countrymen in the most trying times and critical situations, and fulfilled my duties to them, I am happy. The testimony of the Senate of the United States in my favor is an high and honorable reward which receives, as it merits, my grateful acknowledgments. My zealous cooperation in measures necessary to secure us justice and consideration may be always depended on.

JOHN ADAMS.

*Address of the House of Representatives to John Adams, President of the United States*¹

JOHN ADAMS,
President of the United States.

Desirous as we are that all causes of hostility may be removed by the amicable adjustment of national differences, we learn with satisfaction that in pursuance of our treaties with Spain and with Great Britain advances have been made for definitively settling the controversies relative to the southern and northeastern limits of the United States. With similar sentiments have we received your information that the proceedings under commissions authorized by the same treaties afford to a respectable portion of our citizens the prospect of a final decision on their claims for maritime injuries committed by subjects of those powers.

¹Richardson, *Messages*, vol. 1, p. 277.

It would be the theme of mutual felicitation were we assured of experiencing similar moderation and justice from the French Republic, between which and the United States differences have unhappily arisen; but this is denied us by the ultimate failure of the measures which have been taken by this Government toward an amicable adjustment of those differences and by the various inadmissible pretensions on the part of that nation.

The continuing in force the decree of January last, to which you have more particularly pointed our attention, ought of itself to be considered as demonstrative of the real intentions of the French Government. That decree proclaims a predatory warfare against the unquestionable rights of neutral commerce which with our means of defense our interest and our honor command us to repel. It therefore now becomes the United States to be as determined in resistance as they have been patient in suffering and condescending in negotiation.

While those who direct the affairs of France persist in the enforcement of decrees so hostile to our essential rights, their conduct forbids us to confide in any of their professions of amity.

As, therefore, the conduct of France hitherto exhibits nothing which ought to change or relax our measures of defense, the policy of extending and invigorating those measures demands our sedulous attention. The sudden and remarkable advantages which this country has experienced from a small naval armament sufficiently prove the utility of its establishment. As it respects the guarding of our coast, the protection of our trade, and the facility of safely transporting the means of territorial defense to every part of our maritime frontier, an adequate naval force must be considered as an important object of national policy. Nor do we hesitate to adopt the opinion that, whether negotiations with France are resumed or not, vigorous preparations for war will be alike indispensable.

In this conjuncture of affairs, while with you we recognize our abundant cause of gratitude to the Supreme Disposer of Events for the ordinary blessings of Providence, we regard as of high national importance the manifestation in our country of a magnanimous spirit of resistance to foreign domination. This spirit merits to be cherished and invigorated by every branch of Government as the estimable pledge of national prosperity and glory.

Disdaining a reliance on foreign protection, wanting no foreign guaranty of our liberties, resolving to maintain our national independence

against every attempt to despoil us of this inestimable treasure, we confide under Providence in the patriotism and energies of the people of these United States for defeating the hostile enterprises of any foreign power.

To adopt with prudent foresight such systematical measures as may be expedient for calling forth those energies wherever the national exigencies may require, whether on the ocean or on our own territory, and to reconcile with the proper security of revenue the convenience of mercantile enterprise, on which so great a proportion of the public resources depends, are objects of moment which shall be duly regarded in the course of our deliberations.

Fully as we accord with you in the opinion that the United States ought not to submit to the humiliation of sending another minister to France without previous assurances sufficiently determinate that he will be duly accredited, we have heard with cordial approbation the declaration of your purpose steadily to observe those maxims of humane and pacific policy by which the United States have hitherto been governed. While it is left with France to take the requisite steps for accommodation, it is worthy the Chief Magistrate of a free people to make known to the world that justice on the part of France will annihilate every obstacle to the restoration of a friendly intercourse, and that the Executive authority of this country will respect the sacred rights of embassy. At the same time, the wisdom and decision which have characterized your past Administration assure us that no illusory professions will seduce you into any abandonment of the rights which belong to the United States as a free and independent nation.

DECEMBER 13, 1798.

*Reply of the President*¹

DECEMBER 14, 1798.

To the House of Representatives of the United States of America.

GENTLEMEN: My sincere acknowledgments are due to the House of Representatives of the United States for this excellent address so consonant to the character of representatives of a great and free people. The judgment and feelings of a nation, I believe, were never more truly expressed by their representatives than by their constituents

¹Richardson, Messages, vol. 1, p. 280.

by your decided declaration that with our means of defense our interest and honor command us to repel a predatory warfare against the unquestionable rights of neutral commerce; that it becomes the United States to be as determined in resistance as they have been patient in suffering and condescending in negotiation; that while those who direct the affairs of France persist in the enforcement of decrees so hostile to our essential rights their conduct forbids us to confide in any of their professions of amity; that an adequate naval force must be considered as an important object of national policy, and that, whether negotiations with France are resumed or not, vigorous preparations for war will be alike indispensable.

The generous disdain you so coolly and deliberately express of a reliance on foreign protection, wanting no foreign guaranty of our liberties, resolving to maintain our national independence against every attempt to despoil us of this inestimable treasure, will meet the full approbation of every sound understanding and exulting applauses from the heart of every faithful American.

I thank you, gentlemen, for your candid approbation of my sentiments on the subject of negotiation and for the declaration of your opinion that the policy of extending and invigorating our measures of defense and the adoption with prudent foresight of such systematical measures as may be expedient for calling forth the energies of our country wherever the national exigencies may require, whether on the ocean or on our own territory, will demand your sedulous attention.

At the same time, I take the liberty to assure you it shall be my vigilant endeavor that no illusory professions shall seduce me into any abandonment of the rights which belong to the United States as a free and independent nation.

JOHN ADAMS.

THIRD ANNUAL ADDRESS¹

UNITED STATES, *December 3, 1799.*

*Gentlemen of the Senate and Gentlemen of the House of
Representatives:*

Persevering in the pacific and humane policy which had been invariably professed and sincerely pursued by the Executive authority of the United States, when indications were made on the part of the

¹Richardson, Messages, vol. 1, pp. 289-290.

French Republic of a disposition to accommodate the existing differences between the two countries, I felt it to be my duty to prepare for meeting their advances by a nomination of ministers upon certain conditions which the honor of our country dictated, and which its moderation had given it a right to prescribe. The assurances which were required of the French Government previous to the departure of our envoys have been given through their minister of foreign relations, and I have directed them to proceed on their mission to Paris. They have full power to conclude a treaty, subject to the constitutional advice and consent of the Senate. The characters of these gentlemen are sure pledges to their country that nothing incompatible with its honor or interest, nothing inconsistent with our obligations of good faith or friendship to any other nation, will be stipulated.

JOHN ADAMS.

*Address of the Senate to John Adams, President of the United States*¹

THE PRESIDENT OF THE UNITED STATES:

When we reflect upon the uncertainty of the result of the late mission to France and upon the uncommon nature, extent, and aspect of the war now raging in Europe, which affects materially our relations with the powers at war, and which has changed the condition of their colonies in our neighborhood, we are of opinion with you that it would be neither wise nor safe to relax our measures of defense or to lessen any of our preparations to repel aggression.

SAMUEL LIVERMORE,
President of the Senate pro tempore.

DECEMBER 9, 1799.

*Address of the House of Representatives to John Adams, President of the United States*²

THE PRESIDENT OF THE UNITED STATES:

Highly approving as we do the pacific and humane policy which has been invariably professed and sincerely pursued by the Executive au-

¹Richardson, Messages, vol. 1, p. 292.

²Ibid., p. 293.

thority of the United States, a policy which our best interests enjoined, and of which honor has permitted the observance, we consider as the most unequivocal proof of your inflexible perseverance in the same well-chosen system your preparation to meet the first indications on the part of the French Republic of a disposition to accommodate the existing differences between the two countries by a nomination of ministers, on certain conditions which the honor of our country unquestionably dictated, and which its moderation had certainly given it a right to prescribe. When the assurances thus required of the French Government, previous to the departure of our envoys, had been given through their minister of foreign relations, the direction that they should proceed on their mission was on your part a completion of the measure, and manifests the sincerity with which it was commenced. We offer up our fervent prayers to the Supreme Ruler of the Universe for the success of their embassy, and that it may be productive of peace and happiness to our common country. The uniform tenor of your conduct through a life useful to your fellow-citizens and honorable to yourself gives a sure pledge of the sincerity with which the avowed objects of the negotiation will be pursued on your part, and we earnestly pray that similar dispositions may be displayed on the part of France. The differences which unfortunately subsist between the two nations can not fail in that event to be happily terminated. To produce this end, to all so desirable, firmness, moderation, and union at home constitute, we are persuaded, the surest means. The character of the gentlemen you have deputed, and still more the character of the Government which deposes them, are safe pledges to their country that nothing incompatible with its honor or interest, nothing inconsistent with our obligations of good faith or friendship to any other nation, will be stipulated.

We learn with pleasure that our citizens, with their property, trading to those ports of St. Domingo with which commercial intercourse has been renewed have been duly respected, and that privateering from those ports has ceased.

DECEMBER 9, 1799.

*Reply of the President*¹

UNITED STATES, December 10, 1799.

Gentlemen of the House of Representatives:

As long as we maintain with harmony and affection the honor of our country consistently with its peace, externally and internally, while that is attainable, or in war when that becomes necessary, assert its real independence and sovereignty, and support the constitutional energies and dignity of its Government, we may be perfectly sure, under the smiles of Divine Providence, that we shall effectually promote and extend our national interest and happiness.

JOHN ADAMS.

FOURTH ANNUAL ADDRESS²

UNITED STATES, November 22, 1800.

Gentlemen of the Senate and Gentlemen of the House of Representatives:

The envoys extraordinary and ministers plenipotentiary from the United States to France were received by the First Consul with the respect due to their character, and three persons with equal powers were appointed to treat with them. Although at the date of the last official intelligence the negotiation had not terminated, yet it is to be hoped that our efforts to effect an accommodation will at length meet with a success proportioned to the sincerity with which they have been so often repeated.

While our best endeavors for the preservation of harmony with all nations will continue to be used, the experience of the world and our own experience admonish us of the insecurity of trusting too confidently to their success. We can not, without committing a dangerous imprudence, abandon those measures of self-protection which are adapted to our situation and to which, notwithstanding our pacific policy, the violence and injustice of others may again compel us to resort. While our vast extent of seacoast, the commercial and agricultural habits of our people, the great capital they will continue to trust

¹Richardson, Messages, vol. 1, p. 296.²Ibid., p. 305.

on the ocean, suggest the system of defense which will be most beneficial to ourselves, our distance from Europe and our resources for maritime strength will enable us to employ it with effect. Seasonable and systematic arrangements, so far as our resources will justify, for a navy adapted to defensive war. and which may in case of necessity be quickly brought into use, seem to be as much recommended by a wise and true economy as by a just regard for our future tranquillity, for the safety of our shores, and for the protection of our property committed to the ocean.

The present Navy of the United States, called suddenly into existence by a great national exigency. has raised us in our own esteem, and by the protection afforded to our commerce has effected to the extent of our expectations the objects for which it was created.

Address of the House of Representatives to John Adams, President of the United States¹

JOHN ADAMS,

President of the United States:

The Constitution of the United States having confided the management of our foreign negotiations to the control of the Executive power, we cheerfully submit to its decisions on this important subject; and in respect to the negotiations now pending with France we sincerely hope that the final result may prove as fortunate to our country as the most ardent mind can wish.

So long as a predatory war is carried on against our commerce we should sacrifice the interests and disappoint the expectations of our constituents should we for a moment relax that system of maritime defense which has resulted in such beneficial effects. At this period it is confidently believed that few persons can be found within the United States who do not admit that a navy, well organized, must constitute the natural and efficient defense of this country against all foreign hostility.

NOVEMBER 26, 1800.

¹Richardson, Messages, vol. 1, p. 310.

Reply of the President¹

WASHINGTON, November 27, 1800.

Mr. Speaker and Gentlemen of the House of Representatives:

With you, gentlemen, I sincerely hope that the final result of the negotiations now pending with France may prove as fortunate to our country as they have been commenced with sincerity and prosecuted with deliberation and caution. With you I cordially agree that so long as a predatory war is carried on against our commerce we should sacrifice the interests and disappoint the expectations of our constituents should we for a moment relax that system of maritime defense which has resulted in such beneficial effects. With you I confidently believe that few persons can be found within the United States who do not admit that a navy, well organized, must constitute the natural and efficient defense of this country against all foreign hostility.

JOHN ADAMS.

¹Richardson, Messages, vol. 1, p. 312.

knowledge of government of France, or shall be employed in any traffic or commerce with, or for any person resident within the jurisdiction, or under the authority of the French Republic. And if any ship or vessel, in any voyage thereafter commencing, and before her return within the United States, shall be voluntarily carried, or suffered to proceed to any French port or place as aforesaid, or shall be employed as aforesaid, contrary to the intent hereof, every such ship or vessel together with her cargo shall be forfeited, and shall accrue, the one half to the use of the United States, and the other half to the use of any person or persons, citizens of the United States, who will inform and prosecute for the same; and shall be liable to be seized, prosecuted and condemned in any circuit or district court of the United States which shall be holden within or for the district where the seizure shall be made.

SEC. 2. *And be it further enacted*, That after the first day of July next, no clearance for a foreign voyage shall be granted to any ship or vessel, owned, hired, or employed, wholly or in part, by any person resident within the United States, until a bond shall be given to the use of the United States, wherein the owner or employer, if usually resident or present, where the clearance shall be required, and otherwise his agent or factor, and the master or captain of such ship or vessel for the intended voyage, shall be parties, in a sum equal to the value of the ship or vessel, and her cargo, and shall find sufficient surety or sureties, to the amount of one half the value thereof, with condition that the same shall not, during her intended voyage or before her return within the United States, proceed, or be carried, directly or indirectly, to any port or place within the territory of the French Republic, or the dependencies thereof, or any place in the West Indies, or elsewhere, under the acknowledged government of France, unless by distress of weather, or want of provisions, or by actual force and violence, to be fully proved and manifested before the acquittance of such bond; and that such vessel is not, and shall not be employed during her intended voyage, or before her return, as aforesaid, in any traffic or commerce with or for any person resident within the territory of that republic, or in any of the dependencies thereof.

SEC. 3. *And be it further enacted*, That from and after due notice of the passing of this act, no French ship or vessel, armed or unarmed, commissioned by or for, or under the authority of the French Republic, or owned, fitted, hired or employed by any person resident within the

territory of that republic, or any of the dependencies thereof, or sailing or coming therefrom, excepting any vessel to which the President of the United States shall grant a passport, which he is hereby authorized to grant in all cases where it shall be requisite for the purposes of any political or national intercourse, shall be allowed an entry, or to remain within the territory of the United States, unless driven there by distress of weather, or in want of provisions. And if contrary to the intent hereof any such ship or vessel shall be found within the jurisdictional limits of the United States, not being liable to seizure for any other cause, the company having charge thereof shall be required to depart and carry away the same, avoiding all unnecessary delay; and if they shall, notwithstanding, remain, it shall be the duty of the collector of the district, wherein, or nearest to which, such ship or vessel shall be, to seize and detain the same, at the expense of the United States: Provided, that ships or vessels which shall be *bona fide* the property of, or hired, or employed by citizens of the United States, shall be excepted from this prohibition until the first day of December next, and no longer: And provided that in the case of vessels hereby prohibited, which shall be driven by distress of weather, or the want of provisions into any port or place of the United States, they may be suffered to remain under the custody of the collector there, or nearest thereto, until suitable repairs or supplies can be obtained, and as soon as may be thereafter shall be required and suffered to depart: but no part of the lading of such vessel shall be taken out or disposed of, unless by the special permit of such collector, or to defray the unavoidable expense of such repairs or supplies.

SEC. 4. *And be it further enacted*, That this act shall continue and be in force until the end of the next session of Congress, and no longer.

SEC. 5. *Provided, and be it further enacted*, That if, before the next session of Congress, the government of France, and all persons acting by or under their authority, shall clearly disavow, and shall be found to refrain from the aggressions, depredations and hostilities which have been, and are by them encouraged and maintained against the vessels and other property of the citizens of the United States, and against their national rights and sovereignty, in violation of the faith of treaties, and the laws of nations, and shall thereby acknowledge the just claims of the United States to be considered as in all respects neutral, and unconnected in the present European war, if the same

knowledge of government of France, or shall be employed in any traffic or commerce with, or for any person resident within the jurisdiction, or under the authority of the French Republic. And if any ship or vessel, in any voyage thereafter commencing, and before her return within the United States, shall be voluntarily carried, or suffered to proceed to any French port or place as aforesaid, or shall be employed as aforesaid, contrary to the intent hereof, every such ship or vessel together with her cargo shall be forfeited, and shall accrue, the one half to the use of the United States, and the other half to the use of any person or persons, citizens of the United States, who will inform and prosecute for the same; and shall be liable to be seized, prosecuted and condemned in any circuit or district court of the United States which shall be holden within or for the district where the seizure shall be made.

SEC. 2. *And be it further enacted*, That after the first day of July next, no clearance for a foreign voyage shall be granted to any ship or vessel, owned, hired, or employed, wholly or in part, by any person resident within the United States, until a bond shall be given to the use of the United States, wherein the owner or employer, if usually resident or present, where the clearance shall be required, and otherwise his agent or factor, and the master or captain of such ship or vessel for the intended voyage, shall be parties, in a sum equal to the value of the ship or vessel, and her cargo, and shall find sufficient surety or sureties, to the amount of one half the value thereof, with condition that the same shall not, during her intended voyage or before her return within the United States, proceed, or be carried, directly or indirectly, to any port or place within the territory of the French Republic, or the dependencies thereof, or any place in the West Indies, or elsewhere, under the acknowledged government of France, unless by distress of weather, or want of provisions, or by actual force and violence, to be fully proved and manifested before the acquittance of such bond; and that such vessel is not, and shall not be employed during her intended voyage, or before her return, as aforesaid, in any traffic or commerce with or for any person resident within the territory of that republic, or in any of the dependencies thereof.

SEC. 3. *And be it further enacted*, That from and after due notice of the passing of this act, no French ship or vessel, armed or unarmed, commissioned by or for, or under the authority of the French Republic, or owned, fitted, hired or employed by any person resident within the

merchant vessel of the United States, and the other half to the captors: And being brought into any port of the United States, shall and may be adjudged and condemned to their use, after due process and trial, in any court of the United States, having admiralty jurisdiction, and which shall be holden for the district into which such captured vessel shall be brought; and the same court shall thereupon order a sale and distribution thereof, accordingly, and at their discretion; saving any agreement, which shall be between the owner or owners, and the commander and crew of such merchant vessel. In all cases of recapture of vessels belonging to citizens of the United States, by any armed merchant vessel, aforesaid, the said vessels, with their cargoes, shall be adjudged to be restored, and shall, by decree of such courts as have jurisdiction, in the premises, be restored to the former owner or owners, he or they paying for salvage, not less than one eighth, nor more than one half of the true value of the said vessels and cargoes, at the discretion of the court; which payments shall be made without any deduction whatsoever.

SEC. 3. *And be it further enacted*, That after notice of this act, at the several custom-houses, no armed merchant vessel of the United States shall receive a clearance or permit, or shall be suffered to depart therefrom, unless the owner or owners, and the master or commander of such vessel for the intended voyage, shall give bond, to the use of the United States, in a sum equal to double the value of such vessel, with condition, that such vessel shall not make or commit any depredation, outrage, unlawful assault, or unprovoked violence upon the high seas, against the vessel of any nation in amity with the United States; and that the guns, arms and ammunition of such vessel shall be returned within the United States, or otherwise accounted for, and shall not be sold or disposed of in any foreign port or place; and that such owner or owners, and the commander and crew of such merchant vessel shall, in all things, observe and perform such further instructions in the premises, as the President of the United States shall establish and order, for the better government of the armed merchant vessels of the United States.

SEC. 4. *And be it further enacted*, That the President of the United States shall be, and he is hereby authorized to establish and order suitable instructions to, and for, the armed merchant vessels of the United States, for the better governing and restraining the commanders and crews who shall be employed therein, and to prevent any out-

shall be continued, then and thereupon it shall be lawful for the President of the United States, being well ascertained of the premises, to remit and discontinue the prohibitions and restraints hereby enacted and declared; and he shall be, and is hereby authorized to make proclamation thereof accordingly: Provided, that nothing in this act contained, shall extend to any ship or vessel to which the President of the United States shall grant a permission to enter or clear; which permission he is hereby authorized to grant to vessels which shall be solely employed in any purpose of political or national intercourse, or to aid the departure of any French persons, with their goods and effects, who shall have been resident within the United States, when he may think it requisite.

APPROVED, June 13, 1798.

CHAP. LX.—*An Act to authorize the defence of the Merchant Vessels of the United States against French depredations.*¹

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the commander and crew of any merchant vessel of the United States, owned wholly by a citizen or citizens thereof, may oppose and defend against any search, restraint or seizure, which shall be attempted upon such vessel, or upon any other vessel, owned, as aforesaid, by the commander or crew of any armed vessel sailing under French colours, or acting, or pretending to act, by, or under the authority of the French republic; and may repel by force any assault or hostility which shall be made or committed, on the part of such French, or pretended French vessel, pursuing such attempt, and may subdue and capture the same; and may also retake any vessel owned, as aforesaid, which may have been captured by any vessel sailing under French colours, or acting, or pretending to act, by or under authority from the French republic.

SEC. 2. *And be it further enacted*, That whenever the commander and crew of any merchant vessel of the United States shall subdue and capture any French, or pretended French armed vessel, from which an assault or other hostility shall be first made, as aforesaid, such armed vessel with her tackle, appurtenances, ammunition and lading, shall accrue, the one half to the owner or owners of such

¹Statutes at Large, vol. I, p. 572.

such armed vessels as may be seized, taken and brought into any port of the United States, in pursuance of the act, entitled "An act more effectually to protect the commerce and coasts of the United States," with the apparel, guns and appurtenances of such vessels, and the goods and effects, which shall be found on board the same, shall be liable to forfeiture and condemnation, and may be libelled and proceeded against in the district courts of the United States, for the district into which the same may be brought: *Provided*, that such forfeiture shall not extend to any goods or effects, the property of any citizen or person resident within the United States, and which shall have been before taken by the crew of such captured vessel.

SEC. 2. *And be it further enacted*, That whenever any vessel the property of, or employed by any citizen of the United States, or person resident therein, or any goods or effects belonging to any such citizen or resident shall be re-captured by any public armed vessel of the United States, the same shall be restored to the former owner or owners, upon due proof, he or they paying and allowing, as and for salvage to the recaptors, one eighth part of the value of such vessel, goods and effects, free of all deductions and expenses.

SEC. 3. *And be it further enacted*, That whenever any armed vessel, captured and condemned, as aforesaid, shall have been of superior or equal force to the public armed vessel of the United States by which such capture shall have been made, the forfeiture shall be and accrue wholly to the captors: and in other cases, one half thereof shall be to the use of the United States, and the residue to the captors. And all salvage which shall be allowed and recovered upon any vessel, goods or effects re-captured, and to be restored, as aforesaid, shall belong wholly to the officers and crew of the public armed vessel of the United States by which such re-capture shall be made: and the court before whom any condemnation shall be had, as aforesaid, shall and may order the sale of the vessel, goods and effects condemned, to be made at public auction, upon due notice by the marshal of the district in which the same shall be: and all expenses of condemnation and sale, being deducted from the proceeds, the part thereof which shall accrue to the United States, shall be paid into the public treasury, and the residue, and all allowances of salvage, as aforesaid, shall be distributed to, and among the officers and crews concerned therein, in the proportions which the President of the United States shall direct.

rage, cruelty or injury which they may be disposed to commit; a copy of which instructions shall be delivered by the collector of the customs to the commander of such vessel, when he shall give bond, as aforesaid. And it shall be the duty of the owner or owners, and commander and crew, for the time being, of such armed merchant vessel of the United States, at each return to any port of the United States, to make report to the collector thereof of any rencounter which shall have happened with any foreign vessel, and of the state of the company and crew of any vessel which they shall have subdued or captured; and the persons of such crew or company shall be delivered to the care of such collector, who, with the aid of the marshal of the same district, or the nearest military officer of the United States, or of the civil or military officers of any state, shall take suitable care for the restraint, preservation and comfort of such persons, at the expense of the United States, until the pleasure of the President of the United States shall be known concerning them.

SEC. 5. *And be it further enacted*, That this act shall continue and be in force for the term of one year, and until the end of the next session of Congress thereafter.

SEC. 6. *Provided, and be it further enacted*, That whenever the government of France, and all persons acting by, or under their authority, shall disavow, and shall cause the commanders and crews of all armed French vessels to refrain from the lawless depredations and outrages hitherto encouraged and authorized by that government against the merchant vessel[s] of the United States, and shall cause the laws of nations to be observed by the said armed French vessels, the President of the United States shall be, and he is hereby authorized to instruct the commanders and crews of the merchant vessels of the United States to submit to any regular search by the commanders or crews of French vessels, and to refrain from any force or capture to be exercised by virtue hereof.

APPROVED, June 25, 1798.

CHAP. LXII.—*An Act in addition to the act more effectually to protect the Commerce and Coasts of the United States.*¹

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all

¹Statutes at Large, vol. I, p. 574.

posal, and removal of their goods and effects, and for their departure, the full time which is, or shall be stipulated by any treaty, where any shall have been between the United States, and the hostile nation or government, of which they shall be natives, citizens, denizens or subjects: and where no such treaty shall have existed, the President of the United States may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

SEC. 2. *And be it further enacted*, That after any proclamation shall be made as aforesaid, it shall be the duty of the several courts of the United States, and of each state, having criminal jurisdiction, and of the several judges and justices of the courts of the United States, and they shall be, and are hereby respectively, authorized upon complaint, against any alien or alien enemies, as aforesaid, who shall be resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President of the United States shall and may establish in the premises, to cause such alien or aliens to be duly apprehended and convened before such court, judge or justice; and after a full examination and hearing on such complaint, and sufficient cause therefor appearing, shall and may order such alien or aliens to be removed out of the territory of the United States, or to give sureties of their good behaviour, or to be otherwise restrained, conformably to the proclamation or regulations which shall and may be established as aforesaid, and may imprison, or otherwise secure such alien or aliens, until the order which shall and may be made, as aforesaid, shall be performed.

SEC. 3. *And be it further enacted*, That it shall be the duty of the marshal of the district in which any alien enemy shall be apprehended, who by the President of the United States, or by order of any court, judge or justice, as aforesaid, shall be required to depart, and to be removed, as aforesaid, to provide therefor, and to execute such order, by himself or his deputy, or other discreet person or persons to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President of the United States, or of the court, judge or justice ordering the same, as the case may be.

APPROVED, July 6, 1798.

SEC. 4. *And be it further enacted*, That it shall be lawful for the President of the United States, to cause the officers and crews of the vessels so captured and hostile persons found on board any vessel, which shall be re-captured, as aforesaid, to be confined in any place of safety within the United States, in such manner as he may think the public interest may require, and all marshals and other officers of the United States are hereby required to execute such orders as the President may issue for the said purpose.

APPROVED, June 28, 1798.

CHAP. LXVI.—*An Act respecting Alien Enemies.*¹

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whenever there shall be a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion shall be perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President of the United States shall make public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies. And the President of the United States shall be, and he is hereby authorized, in any event, as aforesaid, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens who shall become liable, as aforesaid; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those, who, not being permitted to reside within the United States, shall refuse or neglect to depart therefrom; and to establish any other regulations which shall be found necessary in the premises and for the public safety: Provided, that aliens resident within the United States, who shall become liable as enemies, in the manner aforesaid, and who shall not be chargeable with actual hostility, or other crime against the public safety, shall be allowed, for the recovery, dis-

¹Statutes at Large, vol. I, p. 577.

SEC. 2. *And be it further enacted*, That the President of the United States shall be, and he is hereby authorized to grant to the owners of private armed ships and vessels of the United States, who shall make application therefor, special commissions in the form which he shall direct, and under the seal of the United States; and such private armed vessels, when duly commissioned, as aforesaid, shall have the same license and authority for the subduing, seizing and capturing any armed French vessel, and for the recapture of the vessels, goods and effects of the people of the United States, as the public armed vessels of the United States may by law have; and shall be, in like manner, subject to such instructions as shall be ordered by the President of the United States, for the regulation of their conduct. And the commissions which shall be granted, as aforesaid, shall be revocable at the pleasure of the President of the United States.

SEC. 3. *Provided, and be it further enacted*, That every person intending to set forth and employ an armed vessel, and applying for a commission, as aforesaid, shall produce in writing the name, and a suitable description of the tonnage and force of the vessel, and the name and place of residence of each owner concerned therein, the number of the crew and the name of the commander, and the two officers next in rank, appointed for such vessel; which writing shall be signed by the person or persons making such application, and filed with the Secretary of State, or shall be delivered to any other officer or person who shall be employed to deliver out such commissions, to be by him transmitted to the Secretary of State.

SEC. 4. *And provided, and be it further enacted*, That before any commission, as aforesaid, shall be issued, the owner or owners of the ship or vessel for which the same shall be requested, and the commander thereof, for the time being, shall give bond to the United States, with at least two responsible sureties, not interested in such vessel, in the penal sum of seven thousand dollars; or if such vessel be provided with more than one hundred and fifty men, then in the penal sum of fourteen thousand dollars; with condition that the owners, and officers, and crews who shall be employed on board of such commissioned vessel, shall and will observe the treaties and laws of the United States, and the instructions which shall be given them for the regulation of their conduct: And will satisfy all damages and injuries which shall be done or committed contrary to the tenor thereof,

CHAP. LXVII.—*An Act to declare the treaties heretofore concluded with France, no longer obligatory on the United States.*¹

WHEREAS the treaties concluded between the United States and France have been repeatedly violated on the part of the French government; and the just claims of the United States for reparation of the injuries so committed have been refused, and their attempts to negotiate an amicable adjustment of all complaints between the two nations, have been repelled with indignity: And whereas, under authority of the French government, there is yet pursued against the United States, a system of predatory violence, infracting the said treaties, and hostile to the rights of a free and independent nation:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States are of right freed and exonerated from the stipulations of the treaties, and of the consular convention, heretofore concluded between the United States and France; and that the same shall not henceforth be regarded as legally obligatory on the government or citizens of the United States.

APPROVED, July 7, 1798.

CHAP. LXVIII.—*An Act further to protect the Commerce of the United States.*²

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States shall be, and he is hereby authorized to instruct the commanders of the public armed vessels which are, or which shall be employed in the service of the United States, to subdue, seize and take any armed French vessel, which shall be found within the jurisdictional limits of the United States, or elsewhere, on the high seas, and such captured vessel, with her apparel, guns and appurtenances, and the goods or effects which shall be found on board the same, being French property, shall be brought within some port of the United States, and shall be duly proceeded against and condemned as forfeited; and shall accrue and be distributed, as by law is or shall be provided respecting the captures which shall be made by the public armed vessels of the United States.

¹Statutes at Large, vol. I, p. 578.

²*Ibid.*, p. 578.

SEC. 2. *And be it further enacted*, That the President of the United States shall be, and he is hereby authorized to grant to the owners of private armed ships and vessels of the United States, who shall make application therefor, special commissions in the form which he shall direct, and under the seal of the United States; and such private armed vessels, when duly commissioned, as aforesaid, shall have the same license and authority for the subduing, seizing and capturing any armed French vessel, and for the recapture of the vessels, goods and effects of the people of the United States, as the public armed vessels of the United States may by law have; and shall be, in like manner, subject to such instructions as shall be ordered by the President of the United States, for the regulation of their conduct. And the commissions which shall be granted, as aforesaid, shall be revocable at the pleasure of the President of the United States.

SEC. 3. *Provided, and be it further enacted*, That every person intending to set forth and employ an armed vessel, and applying for a commission, as aforesaid, shall produce in writing the name, and a suitable description of the tonnage and force of the vessel, and the name and place of residence of each owner concerned therein, the number of the crew and the name of the commander, and the two officers next in rank, appointed for such vessel; which writing shall be signed by the person or persons making such application, and filed with the Secretary of State, or shall be delivered to any other officer or person who shall be employed to deliver out such commissions, to be by him transmitted to the Secretary of State.

SEC. 4. *And provided, and be it further enacted*, That before any commission, as aforesaid, shall be issued, the owner or owners of the ship or vessel for which the same shall be requested, and the commander thereof, for the time being, shall give bond to the United States, with at least two responsible sureties, not interested in such vessel, in the penal sum of seven thousand dollars; or if such vessel be provided with more than one hundred and fifty men, then in the penal sum of fourteen thousand dollars; with condition that the owners, and officers, and crews who shall be employed on board of such commissioned vessel, shall and will observe the treaties and laws of the United States, and the instructions which shall be given them for the regulation of their conduct: And will satisfy all damages and injuries which shall be done or committed contrary to the tenor thereof,

by such vessel, during her commission, and to deliver up the same when revoked by the President of the United States.

SEC. 5. *And be it further enacted*, That all armed French vessels, together with their apparel, guns and appurtenances, and any goods or effects which shall be found on board the same, being French property, and which shall be captured by any private armed vessel or vessels of the United States, duly commissioned, as aforesaid, shall be forfeited, and shall accrue to the owners thereof, and the officers and crews by whom such captures shall be made; and on due condemnation had, shall be distributed according to any agreement which shall be between them; or in failure of such agreement, then by the discretion of the court before whom such condemnation shall be.

SEC. 6. *And be it further enacted*, That all vessels, goods and effects, the property of any citizen of the United States, or person resident therein, which shall be recaptured, as aforesaid, shall be restored to the lawful owners, upon payment by them, respectively, of a just and reasonable salvage, to be determined by the mutual agreement of the parties concerned, or by the decree of any court of the United States having maritime jurisdiction according to the nature of each case: *Provided*, that such allowance shall not be less than one eighth, or exceeding one half of the full value of such recapture, without any deduction. And such salvage shall be distributed to and among the owners, officers and crews of the private armed vessel or vessels entitled thereto, according to any agreement which shall be between them; or in case of no agreement, then by the decree of the court who shall determine upon such salvage.

SEC. 7. *And be it further enacted*, That before breaking bulk of any vessel which shall be captured, as aforesaid, or other disposal or conversion thereof, or of any articles which shall be found on board the same, such capture shall be brought into some port of the United States, and shall be libelled and proceeded against before the district court of the same district; and if after a due course of proceedings, such capture shall be decreed as forfeited in the district court, or in the circuit court of the same district, in the case of any appeal duly allowed, the same shall be delivered to the owners and captors concerned therein, or shall be publicly sold by the marshal of the same court, as shall be finally decreed and ordered by the court. And the same court, who shall have final jurisdiction of any libel or complaint of any capture, as aforesaid, shall and may decree restitution,

weather, or other casualty endangering the safety of such ship or vessel, or of the mariners on board the same, or shall be taken by any armed vessel, or other superior force, into any port or place within the territories of the French Republic, or any of the dependencies thereof, and shall there necessarily unlade and deliver, or shall be deprived of any cargo then on board, then, and in such case, the master or other person having charge of such ship or vessel, may receive compensation or payment in bills of exchange, or in money or bullion, for such cargo, but not otherwise, and shall not be understood thereby to contravene this law, or to incur a forfeiture of the said bond.

SEC. 4. *And be it further enacted*, That no ship or vessel coming from any port or place within the territories of the French Republic, or any of the dependencies thereof, whether with or without a cargo, or from any other port or place, with a cargo on board obtained for, or laden on board of such vessel at any port or place within the said territories or dependencies, which shall arrive within the limits of the United States after the said second day of March next, shall be admitted to an entry with the collector of any district; and each and every such ship or vessel which shall arrive as aforesaid, having on board any goods, wares or merchandise, destined to be delivered within the United States, contrary to the intent of this act, or which shall have otherwise contravened the same, together with the cargo which shall be found on board, shall be forfeited, and may be seized and condemned in any court of the United States having competent jurisdiction: *Provided*, that nothing herein contained shall be construed to prohibit the entry of any vessel having a passport granted under the authority of the French Republic, and solely employed for purposes of political or national intercourse with the government of the United States, and not in any commercial intercourse, and which shall be received, and permitted by the President of the United States to remain within the same: *And provided also*, that until the first day of August next, and no longer, any ship or vessel, wholly owned or employed by a foreigner, other than any person resident in France, or in any of the dependencies of the French Republic, and which coming therefrom shall be destined to the United States, and shall arrive within the same, not having otherwise contravened this act, shall be required and permitted to depart therefrom, and in case she shall accordingly depart, without any unreasonable delay, and without delivery, or at-

tempting to deliver, any cargo or lading within the United States, such ship or vessel, or any cargo which may be on board the same, shall not be liable to the forfeiture aforesaid.

SEC. 5. *And be it further enacted*, That if any ship or vessel, coming from any port or place within the territories of the French Republic, or any of the dependencies thereof, or with any cargo there obtained on board, but not destined to any port or place within the United States, shall be compelled by distress of weather, or other necessity, to put into any port or place within the limits of the United States, such ship or vessel shall be there hospitably received in the manner prescribed by the act, intituled "An act to regulate the collection of duties on imports and tonnage"; and shall be permitted to make such repairs, and to obtain such supplies as shall be necessary to enable her to proceed according to her destination; and such repairs and supplies being obtained, shall be thereafter required and permitted to depart. But if such ship or vessel shall not conform to the regulations prescribed by the act last mentioned, or shall unlade any part of her cargo, or shall take on board any cargo or supplies whatever, without the permit of the collector of the district previously obtained therefor, or shall refuse, or unreasonably delay to depart from and out of the United States, after having received a written notice to depart, which such collector may, and shall give, as soon as such ship or vessel shall be fit for sea; or having departed shall return to the United States, not being compelled thereto by further distress or necessity, in each and every such case, such ship or vessel and her cargo shall be forfeited and may be seized, and condemned in any court of the United States having competent jurisdiction.

SEC. 6 *And be it further enacted*, That at any time after the passing of this act, it shall be lawful for the President of the United States, by his order to remit and discontinue for the time being, whenever he shall deem it expedient, and for the interest of the United States, all or any of the restraints and prohibitions imposed by this act, in respect to the territories of the French Republic, or to any island, port or place belonging to the said Republic, with which in his opinion a commercial intercourse may be safely renewed; and also it shall be lawful for the President of the United States, whenever he shall afterwards deem it expedient, to revoke such order, and hereby to re-establish such restraints and prohibitions. And the President of the

United States shall be, and he is hereby authorized, to make proclamation thereof accordingly.

SEC. 7. *And be it further enacted*, That the whole of the island of Hispaniola shall for the purposes of this act be considered as a dependency of the French Republic: *Provided*, that nothing herein contained shall be deemed to repeal or annul in any part, the order or proclamation of the President of the United States, heretofore issued for permitting commercial intercourse with certain ports of that island.

SEC. 8. *And be it further enacted*, That it shall be lawful for the President of the United States, to give instructions to the public armed vessels of the United States, to stop and examine any ship or vessel of the United States on the high sea, which there may be reason to suspect to be engaged in any traffic or commerce contrary to this act, and if upon examination, it shall appear that such ship or vessel is bound or sailing to, or from any port or place, contrary to the true intent and meaning of this act, it shall be the duty of the commander of such public armed vessel, to seize every ship or vessel engaged in such illicit commerce, and send the same to the nearest convenient port of the United States, to be there prosecuted in due course of law, and held liable to the penalties and forfeitures provided by this act.

SEC. 9. *And be it further enacted*, That all penalties and forfeitures incurred by force of this act, shall, and may be examined, mitigated and remitted in like manner, and under the like conditions, regulations and restrictions, as are prescribed, authorized and directed by the act, intituled "An act to provide for mitigating, or remitting, the forfeitures, penalties and disabilities accruing in certain cases therein mentioned"; and all penalties and forfeitures, which may be recovered in pursuance of this act in consequence of any seizure made by the commander of any public armed vessel of the United States, shall be distributed according to the rules prescribed by the act, intituled "An act for the government of the navy of the United States"; and all other penalties arising under this act, and which may be recovered, shall be distributed and accounted for in the manner prescribed by the act, intituled "An act to regulate the collection of duties on imports and tonnage."

SEC. 10. *And be it further enacted*, That nothing contained in this act shall extend to any ship or vessel to which the President of the

United States shall grant a permission to enter and clear ; provided such ship or vessel shall be solely employed, pursuant to such permission, for purposes of national intercourse ; and shall not be permitted to proceed with, or to bring to the United States any cargo or lading whatever other than necessary sea-stores.

SEC. 11. *And be it further enacted*, That the act, intituled "An act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof," shall be, and is hereby continued and shall be taken to be in force in respect to all offences, which shall have been committed against the same, before the expiration thereof ; and to the intent that all seizures, forfeitures and penalties arising upon such offences, may be had, sued for, prosecuted and recovered, any limitation of the said act to the contrary hereof notwithstanding.

SEC. 12. *And be it further enacted*, That this act shall be and remain in force until the third day of March, one thousand eight hundred and one: *Provided, however*, the expiration thereof shall not prevent or defeat any seizure, or prosecution for a forfeiture incurred under this act, and during the continuance thereof.

APPROVED, February 27, 1800.

CHAP. XXVII.—*An Act to continue in force the act intituled "An act to authorize the defence of the merchant vessels of the United States against French depredations."*¹

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act passed on the twenty-fifth day of June, one thousand seven hundred and ninety-eight, intituled "An act to authorize the defence of the merchant vessels of the United States against French depredations," excepting such parts of the said act as relate to salvage in cases of recapture, shall continue and be in force for and during the term of one year, and from thence to the end of the next session of Congress thereafter, and no longer.

APPROVED, April 22, 1800.

¹Statutes at Large, vol. II, p. 39.

Proclamations

*Proclamation of June 26, 1799*¹

BY THE PRESIDENT OF THE UNITED STATES OF
AMERICA

A PROCLAMATION

Whereas by an act of the Congress of the United States passed the 9th day of February last, entitled "An act further to suspend the commercial intercourse between the United States and France and the dependencies thereof," it is provided that at any time after the passing of this act it shall be lawful for the President of the United States, if he shall deem it expedient and consistent with the interests of the United States, by his order to remit and discontinue for the time being the restraints and prohibitions by the said act imposed, either with respect to the French Republic or to any island, port, or place belonging to the said Republic with which a commercial intercourse may safely be renewed, and also to revoke such order whenever, in his opinion, the interest of the United States shall require; and he is authorized to make proclamation thereof accordingly; and

Whereas the arrangements which have been made at St. Domingo for the safety of the commerce of the United States and for the admission of American vessels into certain ports of that island do, in my opinion, render it expedient and for the interest of the United States to renew a commercial intercourse with such ports:

Therefore I, John Adams, President of the United States, by virtue of the powers vested in me by the above-recited act, do hereby remit and discontinue the restraints and prohibitions therein contained within the limits and under the regulations here following, to wit:

1. It shall be lawful for vessels which have departed or may depart from the United States to enter the ports of Cape François and Port Republicain, formerly called Port-au-Prince, in the said island of St. Domingo, on and after the 1st day of August next.

2. No vessel shall be cleared for any other port in St. Domingo than Cape François and Port Republicain.

¹Richardson, Messages, vol. I, p. 288.

3. It shall be lawful for vessels which shall enter the said ports of Cape François and Port Republicain after the 31st day of July next to depart from thence to any other port in said island between Monte Christi on the north and Petit Goave on the west; provided it be done with the consent of the Government of St. Domingo and pursuant to certificates or passports expressing such consent, signed by the consul-general of the United States or consul residing at the port of departure.

4. All vessels sailing in contravention of these regulations will be out of the protection of the United States and be, moreover, liable to capture, seizure, and confiscation.

Given under my hand and the seal of the United States, at Philadelphia, the 26th day of June, A. D. 1799, and of the Independence of the said States the twenty-third.

(Seal.)

JOHN ADAMS.

By the President:

TIMOTHY PICKERING,
Secretary of State.

Proclamation of May 9, 1800¹

PROCLAMATION

MAY 9, 1800.

Whereas by an act of Congress of the United States passed the 27th day of February last, entitled "An act further to suspend the commercial intercourse between the United States and France and the dependencies thereof," it is enacted that at any time after the passing of the said act it shall be lawful for the President of the United States, by his order, to remit and discontinue for the time being, whenever he shall deem it expedient and for the interest of the United States, all or any of the restraints and prohibitions imposed by the said act in respect to the territories of the French Republic, or to any island, port, or place belonging to the said Republic with which, in his opinion, a commercial intercourse may be safely renewed, and to make proclamation thereof accordingly; and it is also thereby further enacted that the whole of the island of Hispaniola shall, for the purposes of the said act, be considered as a dependence of the French Republic; and

¹Richardson, Messages, vol. I, p. 302.

Whereas the circumstances of certain ports and places of the said island not comprised in the proclamation of the 26th day of June, 1799, are such that I deem it expedient and for the interest of the United States to remit and discontinue the restraints and prohibitions imposed by the said act in respect to those ports and places in order that a commercial intercourse with the same may be renewed:

Therefore I, John Adams, President of the United States, by virtue of the powers vested in me as aforesaid, do hereby remit and discontinue the restraints and prohibitions imposed by the act aforesaid in respect to all the ports and places in the said island of Hispaniola from Monte Christi on the north, round by the eastern end thereof as far as the port of Jacmel on the south, inclusively. And it shall henceforth be lawful for vessels of the United States to enter and trade at any of the said ports and places, provided it be done with the consent of the Government of St. Domingo. And for this purpose it is hereby required that such vessels first enter the port of Cape François or Port Republicain, in the said island, and there obtain the passports of the said Government, which shall also be signed by the consul-general or consul of the United States residing at Cape François or Port Republicain, permitting such vessel to go thence to the other ports and places of the said island hereinbefore mentioned and described. Of all which the collectors of the customs and all other officers and citizens of the United States are to take due notice and govern themselves.

In testimony, etc.

JOHN ADAMS

Proclamation of September 6, 1800¹

BY JOHN ADAMS, PRESIDENT OF THE UNITED STATES
OF AMERICA

A PROCLAMATION

Whereas by an act of the Congress of the United States passed on the 27th day of February last, entitled "An act further to suspend the commercial intercourse between the United States and France and the dependencies thereof," it is enacted "that at any time after the passing of the said act it shall be lawful for the President of the United

States, by his order, to remit and discontinue for the time being, whenever he shall deem it expedient and for the interest of the United States, all or any of the restraints and prohibitions imposed by the said act in respect to the territories of the French Republic, or to any island, port, or place belonging to said Republic with which, in his opinion, a commercial intercourse may be safely renewed, and to make proclamation thereof accordingly;" and it is also thereby further enacted that the whole of the island of Hispaniola shall, for the purposes of the said act, be considered as a dependence of the French Republic; and

Whereas the circumstances of the said island are such that, in my opinion, a commercial intercourse may safely be renewed with every part thereof, under the limitations and restrictions hereinafter mentioned:

Therefore I, John Adams, President of the United States, by virtue of the powers vested in me as aforesaid, do hereby remit and discontinue the restraints and prohibitions imposed by the act aforesaid in respect to every part of the said island, so that it shall be lawful for vessels of the United States to trade at any of the ports and places thereof, provided it be done with the consent of the Government of St. Domingo; and for this purpose it is hereby required that such vessels first clear for and enter the port of Cape François or Port Republicain, in the said island, and there obtain the passports of the said Government, which shall also be signed by the consul-general of the United States, or their consul residing at Cape François, or their consul residing at Port Republicain, permitting such vessels to go thence to the other ports and places of the said island. Of all which the collectors of the customs and all other officers and citizens of the United States are to take due notice and govern themselves accordingly.

Given under my hand and the seal of the United States of America, at the city of Washington, this 6th day of September, A. D. 1800, and of the Independence of the said States the twenty-fifth.

(Seal.)

JOHN ADAMS.

By the President:

J. MARSHALL,

Secretary of State.

¹Richardson, Messages, vol. I, p. 304.

APPENDIX

CONVENTION OF PEACE, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES AND FRANCE¹

*Concluded September 30, 1800; ratifications exchanged at Paris, July
31, 1801; proclaimed December 21, 1801*

The Premier Consul of the French Republic in the name of the people of France, and the President of the United States of America, equally desirous to terminate the differences which have arisen between the two States, have respectfully appointed their Plenipotentiaries, and given them full power to treat upon those differences, and to terminate the same; that is to say, the Premier Consul of the French Republic, in the name of the people of France, has appointed for the Plenipotentiaries of the said Republic the citizens Joseph Bonaparte, ex-Ambassador at Rome and Counsellor of State; Charles Pierre Claret Fleurieu, Member of the National Institute and of the Board of Longitude of France and Counsellor of State, President of the Section of Marine; and Pierre Louis Røederer, Member of the National Institute of France and Counsellor of State, President of the Section of the Interior; and the President of the United States of America, by and with the advice and consent of the Senate of the said States, has appointed for their Plenipotentiaries, Oliver Ellsworth, Chief Justice of the United States; William Richardson Davie, late Governor of the State of North Carolina; and William Vans Murray, Minister Resident of the United States at The Hague; who, after having exchanged their full powers, and after full and mature discussion of the respective interests, have agreed on the following articles:

ARTICLE I

There shall be a firm, inviolable, and universal peace, and a true and sincere friendship between the French Republic and the United States of America, and between their respective countries, territories, cities, towns, and people, without exception of persons or places.

ARTICLE II

The Ministers Plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of 6th February, 1778, the treaty of amity and commerce of the same date, and the

¹Malloy, *Treaties, etc.*, vol. 1, p. 496.

convention of 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time, and until they may have agreed upon these points the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows:

ARTICLE III

The public ships which have been taken on one part and the other, or which may be taken before the exchange of ratifications, shall be restored.

ARTICLE IV

Property captured, and not yet definitively condemned, or which may be captured before the exchange of ratifications (contraband goods destined to an enemy's port excepted), shall be mutually restored on the following proofs of ownership, viz.: The proof on both sides with respect to merchant ships, whether armed or unarmed, shall be a passport in the form following:

"To all who shall see these presents, greeting:

"It is hereby made known that leave and permission has been given to ———, master and commander of the ship called ———, of the town of ———, burthen ——— tons, or thereabouts, lying at present in the port and haven of ———, and bound for ———, and laden with ———; after that his ship has been visited, and before sailing, he shall make oath before the officers who have the jurisdiction of maritime affairs, that the said ship belongs to one or more of the subjects of ———, the act whereof shall be put at the end of these presents, as likewise that he will keep, and cause to be kept, by his crew on board, the marine ordinances and regulations, and enter in the proper office a list, signed and witnessed, containing the names and surnames, the places of birth and abode of the crew of his ship, and of all who shall embark on board her, whom he shall not take on board without the knowledge and permission of the officers of the marine; and in every port or haven where he shall enter with his ship, he shall shew this present leave to the officers and judges of the marine, and shall give a faithful account to them of what passed and was done during his voyage; and he shall carry the colours, arms, and ensigns of the [French Republic or the United States] during his voyage. In witness whereof we have signed these presents, and put the seal of our arms thereunto, and caused the same to be countersigned by ——— at ——— the ——— day of ——— anno Domini."

And this passport will be sufficient without any other paper, any ordinance to the contrary notwithstanding; which passport shall not be deemed requisite to have been renewed or recalled, whatever num-

ber of voyages the said ship may have made, unless she shall have returned home within the space of a year. Proof with respect to the cargo shall be certificates, containing the several particulars of the cargo, the place whence the ship sailed and whither she is bound, so that the forbidden and contraband goods may be distinguished by the certificates; which certificates shall have been made out by the officers of the place whence the ship set sail, in the accustomed form of the country. And if such passport or certificates, or both, shall have been destroyed by accident or taken away by force, their deficiency may be supplied by such other proofs of ownership as are admissible by the general usage of nations. Proof with respect to other than merchant ships shall be the commission they bear.

This article shall take effect from the date of the signature of the present convention. And if, from the date of the said signature, any property shall be condemned contrary to the intent of the said convention, before the knowledge of this stipulation shall be obtained, the property so condemned shall, without delay, be restored or paid for.

ARTICLE V

The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid, or the payment may be prosecuted, in the same manner as if there had been no misunderstanding between the two States. But this clause shall not extend to indemnities claimed on account of captures or confiscations.

ARTICLE VI

Commerce between the parties shall be free. The vessels of the two nations and their privateers, as well as their prizes, shall be treated in their respective ports as those of the nation the most favoured; and, in general, the two parties shall enjoy in the ports of each other, in regard to commerce and navigation, the privileges of the most favoured nation.

ARTICLE VII

The citizens and inhabitants of the United States shall be at liberty to dispose by testament, donation, or otherwise, of their goods, moveable and immoveable, holden in the territory of the French Republic in Europe, and the citizens of the French Republic shall have the same liberty with regard to goods, moveable and immoveable, holden in the territory of the United States, in favor of such persons as they shall think proper. The citizens and inhabitants of either of the two countries who shall be heirs of goods, moveable or immoveable, in the other, shall be able to succeed ab intestato, without being obliged to obtain letters of naturalization, and without having the effect of

this provision contested or impeded, under any pretext whatever; and the said heirs, whether such by particular title, or ab intestato, shall be exempt from any duty whatever in both countries. It is agreed that this article shall in no manner derogate from the laws which either State may now have in force, or hereafter may enact, to prevent emigration; and also that in case the laws of either of the two States should restrain strangers from the exercise of the rights of property with respect to real estate, such real estate may be sold, or otherwise disposed of, to citizens or inhabitants of the country where it may be, and the other nation shall be at liberty to enact similar laws.

ARTICLE VIII

To favor commerce on both sides it is agreed that, in case a war should break out between the two nations, which God forbid, the term of six months after the declaration of war shall be allowed to the merchants and other citizens and inhabitants respectively, on one side and the other, during which time they shall be at liberty to withdraw themselves, with their effects and moveables, which they shall be at liberty to carry, send away, or sell, as they please, without the least obstruction; nor shall their effects, much less their persons, be seized during such term of six months; on the contrary, passports, which shall be valid for a time necessary for their return, shall be given to them for their vessels and the effects which they shall be willing to send away or carry with them; and such passports shall be a safe conduct against all insults and prizes which privateers may attempt against their persons and effects. And if anything be taken from them, or any injury done to them or their effects, by one of the parties, their citizens or inhabitants, within the term above prescribed, full satisfaction shall be made to them on that account.

ARTICLE IX

Neither the debts due from individuals of the one nation to individuals of the other, nor shares, nor monies, which they may have in public funds, or in the public or private banks, shall ever, in any event of war or of national difference, be sequestered or confiscated.

ARTICLE X

It shall be free for the two contracting parties to appoint commercial agents for the protection of trade, to reside in France and the United States. Either party may except such place as may be thought proper from the residence of those agents. Before any agent shall exercise his functions, he shall be accepted in the usual forms by the party to whom he is sent; and when he shall have been accepted and furnished with his exequatur, he shall enjoy the rights and prerogatives of the similar agents of the most favoured nations.

ARTICLE XI

The citizens of the French Republic shall pay in the ports, havens, roads, countries, islands, cities, and towns of the United States, no other or greater duties or imposts, of what nature soever they may be, or by what name soever called, than those which the nation most favoured are or shall be obliged to pay; and they shall enjoy all the rights, liberties, privileges, immunities, and exemptions in trade, navigation, and commerce, whether in passing from one port in the said State to another, or in going to and from the same from and to any part of the world, which the said nations do or shall enjoy. And the citizens of the United States shall reciprocally enjoy, in the territories of the French Republic in Europe, the same privileges and immunities, as well for their property and persons as for what concerns trade, navigation, and commerce.

ARTICLE XII

It shall be lawful for the citizens of either country to sail with their ships and merchandise (contraband goods always excepted) from any port whatever to any port of the enemy of the other, and to sail and trade with their ships and merchandise, with perfect security and liberty, from the countries, ports, and places of those who are enemies of both, or of either party, without any opposition or disturbance whatsoever, and to pass not only directly from the places and ports of the enemy aforementioned to neutral ports and places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of the same Power or under the several, unless such ports or places shall be actually blockaded, besieged, or invested.

And whereas it frequently happens that vessels sail for a port or place belonging to an enemy without knowing that the same is either besieged, blockaded, or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place, but she shall not be detained, nor any part of her cargo, if not contraband, be confiscated, unless, after notice of such blockade or investment, she shall again attempt to enter; but she shall be permitted to go to any other port or place she shall think proper. Nor shall any vessel of either that may have entered into such port or place before the same was actually besieged, blockaded, or invested by the other, be restrained from quitting such place with her cargo, nor if found therein after the reduction and surrender of such place shall such vessel or her cargo be liable to confiscation, but they shall be restored to the owners thereof.

ARTICLE XIII

In order to regulate what shall be deemed contraband of war, there shall be comprised, under that denomination, gun-powder, saltpetre,

petards, match, ball, bombs, grenades, carcasses, pikes, halberts, swords, belts, pistols, holsters, cavalry-saddles and furniture, cannon, mortars, their carriages and beds, and generally all kinds of arms, ammunition of war, and instruments fit for the use of troops; all the above articles, whenever they are destined to the port of an enemy, are hereby declared to be contraband, and just objects of confiscation; but the vessel in which they are laden, and the residue of the cargo, shall be considered free, and not in any manner infected by the prohibited goods, whether belonging to the same or a different owner.

ARTICLE XIV

It is hereby stipulated that free ships shall give a freedom to goods, and that everything shall be deemed to be free and exempt which shall be found on board the ships belonging to the citizens of either of the contracting parties, although the whole lading, or any part thereof, should appertain to the enemies of either, contraband goods being always excepted. It is also agreed, in like manner, that the same liberty be extended to persons who are on board a free ship, with this effect, that although they be enemies to either party, they are not to be taken out of that free ship, unless they are soldiers and in actual service of the enemy.

ARTICLE XV

On the contrary, it is agreed that whatever shall be found to be laden by the citizens of either party on any ship belonging to the enemies of the other, or their citizens, shall be confiscated without distinction of goods, contraband or not contraband, in the same manner as if it belonged to the enemy, except such goods and merchandizes as were put on board such ship before the declaration of war, or even after such declaration, if so be it were done without knowledge of such declaration; so that the goods of the citizens of either party, whether they be of the nature of such as are prohibited, or otherwise, which, as is aforesaid, were put on board any ship belonging to an enemy before the war, or after the declaration of the same, without the knowledge of it, shall no ways be liable to confiscation, but shall well and truly be restored without delay to the proprietors demanding the same; but so as that if the said merchandizes be contraband, it shall not be any ways lawful to carry them afterwards to any ports belonging to the enemy. The two contracting parties agree that the term of two months being passed after the declaration of war, their respective citizens, from whatever part of the world they come, shall not plead the ignorance mentioned in this article.

ARTICLE XVI

The merchant ships belonging to the citizens of either of the contracting parties, which shall be bound to a port of the enemy of one of the parties, and concerning whose voyage and the articles of their cargo there shall be just grounds of suspicion, shall be obliged to exhibit, as well upon the high seas as in the ports or roads, not only their passports, but likewise their certificates, showing that their goods are not of the quality of those which are specified to be contraband in the thirteenth article of the present convention.

ARTICLE XVII

And that captures on light suspicions may be avoided, and injuries thence arising prevented, it is agreed that when one party shall be engaged in war, and the other party be neuter, the ships of the neutral party shall be furnished with passports similar to that described in the fourth article, that it may appear thereby that the ships really belong to the citizens of the neutral party; they shall be valid for any number of voyages, but shall be renewed every year; that is, if the ship happens to return home in the space of a year. If the ships are laden, they shall be provided not only with the passports above mentioned, but also with certificates similar to those described in the same article, so that it may be known whether they carry any contraband goods. No other paper shall be required, any usage or ordinance to the contrary notwithstanding. And if it shall not appear from the said certificates that there are contraband goods on board, the ships shall be permitted to proceed on their voyage. If it shall appear from the certificates that there are contraband goods on board any such ship, and the commander of the same shall offer to deliver them up, the offer shall be accepted, and the ship shall be at liberty to pursue its voyage, unless the quantity of contraband goods be greater than can conveniently be received on board the ship of war or privateer, in which case the ship may be carried into port for the delivery of the same.

If any ship shall not be furnished with such passport or certificates as are above required for the same, such case may be examined by a proper judge or tribunal, and if it shall appear from other documents or proofs admissible by the usage of nations, that the ship belongs to the citizens of the neutral party, it shall not be confiscated, but shall be released with her cargo (contraband goods excepted) and be permitted to proceed on her voyage.

If the master of a ship named in the passport should happen to die, or be removed by any other cause, and another put in his place, the ship and cargo shall nevertheless be equally secure, and the passport remain in full force.

ARTICLE XVIII

If the ships of the citizens of either of the parties shall be met with, either sailing along the coasts or on the high seas, by any ship of war or privateer of the other, for the avoiding of any disorder the said ships of war or privateers shall remain out of cannon-shot, and may send their boats on board the merchant ship which they shall so meet with, and may enter her to the number of two or three men only, to whom the master or commander of such ship shall exhibit his passport concerning the property of the ship, made out according to the form prescribed in the fourth article. And it is expressly agreed that the neutral party shall in no case be required to go on board the examining vessel for the purpose of exhibiting his papers, or for any other examination whatever.

ARTICLE XIX

It is expressly agreed by the contracting parties that the stipulations above mentioned, relative to the conduct to be observed on the sea by the cruisers of the belligerent party towards the ships of the neutral party, shall be applied only to ships sailing without convoy; and when the said ships shall be convoyed, it being the intention of the parties to observe all the regard due to the protection of the flag displayed by public ships, it shall not be lawful to visit them; but the verbal declaration of the commander of the convoy, that the ships he convays belong to the nation whose flag he carries, and that they have no contraband goods on board, shall be considered by the respective cruisers as fully sufficient, the two parties reciprocally engaging not to admit, under the protection of their convoys, ships which shall carry contraband goods destined to an enemy.

ARTICLE XX

In all cases where vessels shall be captured or detained, under pretence of carrying to the enemy contraband goods, the captor shall give a receipt for such of the papers of the vessel as he shall retain, which receipt shall be annexed to a descriptive list of the said papers; and it shall be unlawful to break up or open the hatches, chests, trunks, casks, bales, or vessels found on board, or remove the smallest part of the goods, unless the lading be brought on shore in presence of the competent officers, and an inventory be made by them of the said goods; nor shall it be lawful to sell, exchange, or alienate the same in any manner, unless there shall have been lawful process, and the competent judge or judges shall have pronounced against such goods sentence of confiscation, saving always the ship and the other goods which it contains.

ARTICLE XXI

And that proper care may be taken of the vessel and cargo, and embezzlement prevented, it is agreed that it shall not be lawful to remove the master, commander, or supercargo of any captured ship from on board thereof, either during the time the ship may be at sea after her capture, or pending the proceedings against her or her cargo, or anything relative thereto. And in all cases where a vessel of the citizens of either party shall be captured or seized, and held for adjudication, her officers, passengers, and crew shall be hospitably treated. They shall not be imprisoned or deprived of any part of their wearing apparel, nor of the possession and use of their money, not exceeding for the captain, supercargo, and mate five hundred dollars each, and for the sailors and passengers one hundred dollars each.

ARTICLE XXII

It is further agreed that in all cases the established courts for prize causes, in the country to which the prizes may be conducted, shall alone take cognizance of them. And whenever such tribunal of either of the parties shall pronounce judgment against any vessel or goods, or property claimed by the citizens of the other party, the sentence or decree shall mention the reasons or motives on which the same shall have been founded, and an authenticated copy of the sentence or decree, and of all the proceedings in the case, shall, if demanded, be delivered to the commander or agent of the said vessel, without any delay, he paying the legal fees for the same.

ARTICLE XXIII

And that more abundant care may be taken for the security of the respective citizens of the contracting parties, and to prevent their suffering injuries by the men-of-war or privateers of either party, all commanders of ships of war and privateers, and all others the said citizens, shall forbear doing any damage to those of the other party, or committing any outrage against them, and if they act to the contrary they shall be punished, and shall also be bound in their persons and estates to make satisfaction and reparation for all damages and the interest thereof, of whatever nature the said damages may be.

For this cause all commanders of privateers, before they receive their commissions, shall hereafter be obliged to give, before a competent judge, sufficient security by at least two responsible sureties who have no interest in the said privateer, each of whom, together with the said commander, shall be jointly and severally bound in the sum of seven thousand dollars or thirty-six thousand eight hundred and twenty francs, or if such ships be provided with above one hundred and fifty seamen or soldiers, in the sum of fourteen thousand

dollars, or seventy-three thousand six hundred and forty francs, to satisfy all damages and injuries which the said privateer, or her officers, or men, or any of them, may do or commit during their cruise, contrary to the tenor of this convention, or to the laws and instructions for regulating their conduct; and further, that in all cases of aggression the said commission shall be revoked and annulled.

ARTICLE XXIV

When the ships of war of the two contracting parties, or those belonging to their citizens which are armed in war, shall be admitted to enter with their prizes the ports of either of the two parties, the said public or private ships, as well as their prizes, shall not be obliged to pay any duty either to the officers of the place, the judges, or any others; nor shall such prizes, when they come to and enter the ports of either party, be arrested or seized, nor shall the officers of the place make examination concerning the lawfulness of such prizes; but they may hoist sail at any time and depart, and carry their prizes to the places expressed in their commissions, which the commanders of such ships of war shall be obliged to shew. It is always understood that the stipulations of this article shall not extend beyond the privileges of the most favored nation.

ARTICLE XXV

It shall not be lawful for any foreign privateers who have commissions from any Prince or State in enmity with either nation, to fit their ships in the ports of either nation, to sell their prizes, or in any manner to exchange them; neither shall they be allowed to purchase provisions, except such as shall be necessary for their going to the next port of that Prince or State from which they have received their commissions.

ARTICLE XXVI

It is further agreed that both the said contracting parties shall not only refuse to receive any pirates into any of their ports, havens, or towns, or permit any of their inhabitants to receive, protect, harbor, conceal, or assist them in any manner, but will bring to condign punishment all such inhabitants as shall be guilty of such acts or offenses.

And all their ships, with the goods or merchandises, taken by them and brought into the port of either of the said parties, shall be seized as far as they can be discovered, and shall be restored to the owners, or their factors or agents duly authorized by them (proper evidence being first given before competent judges for proving the property;) even in case such effects should have passed into other hands by sale, if it be proved that the buyers knew or had good reason to believe or suspect that they had been piratically taken.

ARTICLE XXVII

Neither party will intermeddle in the fisheries of the other on its coasts, nor disturb the other in the exercise of the rights which it now holds or may acquire on the coast of Newfoundland, in the Gulph of St. Lawrence, or elsewhere on the American coast northward of the United States. But the whale and seal fisheries shall be free to both in every quarter of the world.

This convention shall be ratified on both sides in due form, and the ratifications exchanged in the space of six months, or sooner, if possible.

In faith whereof the respective Plenipotentiaries have signed the above articles both in the French and English languages, and they have thereto affixed their seals: declaring, nevertheless, that the signing in the two languages shall not be brought into precedent, nor in any way operate to the prejudice of either party.

Done at Paris the eighth day of Vendémiaire of the ninth year of the French Republic, the thirtieth day of September, anno Domini eighteen hundred.

[SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]

J. BONAPARTE.
C. P. FLEURIEU.
ROEDERER.
O. ELLSWORTH.
W. R. DAVIE.
W. V. MURRAY.

NOTE:—The Senate of the United States did, by their resolution of the 3d day of February, 1801, consent to and advise the ratification of the convention: *Provided*, The second article be expunged, and that the following article be added or inserted: "It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of the ratifications."

Bonaparte, First Consul, in the name of the French people, consented on the 31st July, 1801, "to accept, ratify, and confirm the above convention, with the addition importing that the convention shall be in force for the space of eight years, and with the retrenchment of the second article: *Provided*, That by this retrenchment the two States renounce the respective pretensions, which are the object of the said article."

These ratifications having been exchanged at Paris on the 31st of July, 1801, were again submitted to the Senate of the United States, which on the 19th of December, 1801, declared the convention fully ratified, and returned it to the President for promulgation. (Malloy, p. 505.)

Carnegie Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

Pamphlet No. 25

OPINIONS OF THE ATTORNEYS GENERAL AND JUDGMENTS OF THE SUPREME COURT AND COURT OF CLAIMS OF THE UNITED STATES RELATING TO THE CONTROVERSY OVER NEUTRAL RIGHTS BETWEEN THE UNITED STATES AND FRANCE, 1797-1800

PUBLISHED BY THE ENDOWMENT
WASHINGTON, D. C.

1917

OPINIONS OF THE ATTORNEYS GENERAL AND JUDGMENTS OF THE
SUPREME COURT AND COURT OF CLAIMS OF THE UNITED
STATES RELATING TO THE CONTROVERSY OVER NEUTRAL
RIGHTS BETWEEN THE UNITED STATES AND FRANCE, 1797-1800

Opinions of the Attorneys General of the United States

TREASON¹

It is treason for a citizen or other person not commissioned, within the United States, to abet France during a maritime war with her.

BUCK TAVERN, *August 21, 1798.*

SIR: Having taken into consideration the acts of the French Republic relative to the United States, and the laws of Congress passed at the last session, it is my opinion that there exists not only an *actual* maritime war between France and the United States, but a maritime war *authorized* by both nations. Consequently, France is our enemy; and to aid, assist, and abet that nation in her maritime warfare, will be treason in a citizen or any other person within the United States not commissioned under France. But in a French subject, commissioned by France, acting openly according to his commission, such assistance will be hostility. The former may be tried and punished according to our laws; the latter must be treated according to the laws of war.

I have thought it my duty to make this communication in consequence of the information you received from Rhode Island, of the intentions of a Frenchman, whose name I do not now call to mind, who is said to be somewhere in this country, on the business of buying ships and supplies of a military kind, for the West Indies. He should be apprehended and tried as a traitor, unless he has a commission, and acts according to it; in which case he should be treated as an enemy, and confined as a prisoner of war.

I have the honor, etc., etc.,

CHARLES LEE.

To the Secretary of State.

¹Opinions of Attorneys General, vol. i, page 84.

PRIZE SHIP AND CREW—HOW TO BE DISPOSED OF¹

If the prize be a pirate, the officers and crew are to be prosecuted in the circuit court of the United States, without respect to the nation to which each individual may belong.

If it be regularly commissioned as a ship-of-war, the officers and crew are to be detained as prisoners, except such as are citizens of the United States.

Citizens of the United States who aid a nation with whom we are at war on the high seas, against the United States, are guilty of treason.

Offenders against the United States may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in a State, but can be tried only before the court of the United States having cognizance of the offense.

Proceedings against the ship and cargo are to be had before the district court of the United States, according to the laws of Congress and the usage and practice of courts of admiralty in prize causes.

ALEXANDRIA, *September 20, 1798.*

SIR: I take the liberty of writing to you on an interesting subject, concerning which you will perhaps hear from the Secretary of State.

According to the account given in the Norfolk paper of the 15th, it seems probable that the ship *Nigre*, prize to the *Constitution*, will be found to be a pirate. If, after due inquiry (which you are requested to make, and for that purpose to go to Norfolk), it shall appear to be the case, the officers and crew, and all others on board having any agency in the ship, are to be prosecuted (witnesses excepted) in the circuit court of the United States for the district of Virginia, according to the laws of the United States, without respect to the nation to which each individual may belong, whether he be British, French, American, or of any other nation.

On the other hand, if the ship is regularly commissioned and authorized by France as a public or private ship of war, all the officers and crew are to be detained as prisoners, at the expense of the United States—except such as are citizens of the United States, or of some one of them, who may be tried for treason in adhering to, and aiding, the enemies of the United States. After mature consideration of the decrees of France, and of the laws of the United States, and the conduct of each nation to the other, it is my opinion that the two nations are in a state of maritime war; and, consequently, that the citizens of the United States who aid and adhere to France in acts of hostility on the high sea, against the United States and their fellow-citizens, are

¹Opinions of Attorneys General, vol. i, page 85.

guilty of treason. Perhaps this opinion may be found erroneous; if so, such citizens, if acquitted of treason, may be indicted for felony, under the ninth section of the act passed 30th April, 1790, entitled "An act for the punishment of certain crimes against the United States."

I conceive the law of Virginia, which requires the examination before a county or corporation court, of criminals triable in the State courts, does not apply to criminals triable before the courts of the United States in the Virginia district. Upon this point, reference may be had to the 23d section of the 20th chapter of the acts of Congress of 1789. By this section, an offender against the United States is, agreeably to the usual mode of process against offenders in such State where he is found, to be arrested and imprisoned, or bailed, as the case may be, for trial before the court of the United States having cognizance of the offense. The *arrest* is to be agreeably to the usual mode of process in the State; the *imprisonment* or *bailment* is also to be agreeably to the usual mode of process in the State; but the *trial* is to be only before the court of the United States having cognizance of the offense. The examination preparatory to the trial is to be before a magistrate, who is to send to the clerk's office of the court, copies of the process and the recognizance of the witnesses, for their appearance to testify. To admit a different construction of this section, would be to admit a different mode of *trial* of the same offense against the United States, in their courts, as it might happen to be cognizable in one district or in another; for the examination before a county or corporation court, according to the law of Virginia, is a species of trial that gives a chance of acquittal unknown in other States. Besides, the text of the Virginia law seems to be confined to offenders amenable to the courts of the State.

Against the ship and cargo, proceedings are to be had before the *district* court of the United States in Virginia, according to the laws of Congress and the usage and practice of courts of admiralty in prize causes.

It will afford me satisfaction to receive from you a statement of facts relative to this ship, and your ideas on the matters of law which have been the subject of these remarks.

I am, etc., etc.,

CHARLES LEE.

TO THOMAS NELSON, ESQ.,
District Attorney, U. S., Yorktown, Virginia.

Judgments of the Supreme Court of the United States

TALBOT v. THE SHIP *AMELIA*, SEEMAN, CLAIMANT¹

Salvage

The officers and crew of a ship of war are entitled to salvage, for the recapture of an armed neutral vessel, from a foreign belligerent, by whom she had been manned with a prize crew.

ERROR from the Circuit Court of New York. It appeared on the record, that Captain Talbot, of the frigate *Constitution*, having recaptured the *Amelia*, an armed Hamburg vessel, which had been captured by a French national corvette, and ordered to St. Domingo for adjudication, brought her into the port of New York. A libel was, thereupon, filed in the district court, by the recaptor, setting forth the facts, and praying that the vessel and cargo might be condemned as prize; or that such other decree might be pronounced as the court should deem just and proper.

A claim was filed by H. F. Seeman, for Chapeau Rouge & Co., of Hamburg, the owners, insisting that the property had not been changed by the capture, and praying restitution, with damages and costs. The District Judge, Hobart, decreed one-half of the gross amount of sales of ship and cargo, without deduction (a sale having been made by consent), to be paid to the recaptors, in the proportions directed by the act of Congress for the government of the navy; and the other half, deducting all costs and charges, to be paid to the claimants.

The cause was brought by appeal before the circuit court, WASHINGTON, Justice, presiding, who reversed the decree of the district court, so far as it ordered payment of one-half of the gross sales to the recaptors, "considering that, as the nation to which the owners of the said ship and cargo belong, is in amity with the French Republic, the ship and cargo could not, consistently with the laws of nations, be condemned by the French, as a lawful prize; and that, therefore, no service was rendered by the *Constitution*, or by the commander, officers or crew thereof, by the recapture aforesaid;" and affirmed the rest of the

¹⁴ Dallas, 34. Same case, second hearing, 1 Cranch, 1.

decree. On the decree of the circuit court, the present writ of error with instituted; and the following statement of facts made a part of the record by consent:

The following case is agreed upon by the parties, to be annexed to the writ of error in this cause, viz.: The ship *Amelia* sailed from Calcutta, in Bengal, in the month of April, 1799, loaded with a cargo of the produce and manufacture of that country, consisting of cotton, sugars and dry goods in bales, bound to Hamburg. On the 6th of September, in the same year, the same was captured, whilst in the pursuit of her said voyage, by the French national corvette *La Diligente*, L. I. Dubois, commander, who took out her captain and part of her crew, together with most of her papers, and placed a prize-master and French sailors on board of her, ordering the prize-master to conduct her to St. Domingo, to be judged according to the laws of war. On the 15th of the same month of September, the United States ship of war, the *Constitution*, commanded by Silas Talbot, Esquire, the libellant, fell in with, and recaptured the *Amelia*, she being then in full possession of the French, and pursuing her course for St. Domingo, according to the orders received from the captain of the French corvette. At the time of the recapture, the *Amelia* had eight iron cannon mounted, and eight wooden guns, with which she had left Calcutta, as before stated. From such of the ship's papers as were found on board, and the testimony in the cause, the ship *Amelia*, and her cargo, appear to have been the property of Chapeau Rouge, a citizen of Hamburg, residing and carrying on commerce in that place. It is conceded, that the Republic of France and the city of Hamburg are not in a state of hostility to each other, and that Hamburg is to be considered as neutral between the present belligerent powers. The *Amelia* and her cargo, having been sent by Captain Talbot to New York, were there libelled in the district court, and such proceedings were thereupon had in that court, and the circuit court for that district, as may appear by the writ of error and return.

ALEXANDER HAMILTON, of counsel for plaintiff in error.

B. LIVINGSTON, of counsel for defendant in error.

The cause was argued, on the 11th, 12th and 13th of August, 1800, by *Ingersoll* and *Lewis*, for the plaintiff in error; and by *M. Levy* and *Dallas*, for the defendant in error. The general points of the discussion were these:

1st. Whether the *Amelia* could be considered, at the time of the recapture, as a French armed vessel, within the meaning of the act of

Congress, which authorizes the seizure of French armed vessels? (1 U. S. Stat. 572.)

2d. Whether Captain Talbot was authorized to make a recapture, the *Amelia* belonging to a power, equally in amity with the United States, and with France?

3. Whether on positive statute, or general principles, a salvage was due to the recaptors, for rescuing the *Amelia* from the French?

On the 18th of August, PATERSON, Justice, stated, that it was the wish of the court to postpone the cause, for further argument, before a fuller bench. It was accordingly, argued again, at Washington, in August term, 1801, by *Ingersoll* and *Bayard* (of Delaware), for the plaintiff in error; and by *M. Levy*, *J. T. Mason* (of Maryland) and *Dallas*, for the defendant in error. And MARSHALL, Chief Justice, delivered the judgment of the court, "that the decree of the circuit court was correct, in reversing the decree of the district court, but not correct in decreeing the restoration of the *Amelia*, without paying salvage. This court, therefore, is of opinion, that the decree, so far as the restoration of the *Amelia* without salvage is ordered, ought to be reversed: and that the *Amelia* and her cargo ought to be restored to the claimant, on paying for salvage one-sixth part of the net value, after deducting therefrom the charges which have been incurred."¹

BAS v. TINGY, (*THE ELIZA*)²

State of war.—Salvage

Every contention, by force, between two nations, in external matters, under authority of their respective governments, is a *public* war.

If a general war be declared, its extent and operations are only restricted and regulated by the *jus belli*, forming part of the law of nations; but if a *partial* war be waged, its extent and operation depend on our municipal laws. CHASE, J.

A belligerent power has a right, by the laws of nations, to search a neutral vessel; and upon suspicion of a violation of her neutral obligations, to seize and carry her into port for further examination. *Ibid.*

¹A full report of the arguments, on the first hearing of this cause, was prepared; but they are found so ably incorporated with the arguments on the second hearing, in Mr. Cranch's Reports, that it has been thought unnecessary to publish it in this volume. 1 Cranch, 1. [Mr. Dallas's note.]

²4 Dallas, 37.

An American vessel, captured by a French privateer, on the 31st March, 1799, and recaptured by a public armed American ship, on the 21st of April, 1799, was condemned to pay salvage, under the act of Congress of the 2d March, 1799.

IN error from the Circuit Court for the district of Pennsylvania. On the return of the record, it appeared by a case stated, that the defendant in error had filed a libel in the district court, as commander of the public armed ship, the *Ganges*, for himself and others, against the ship *Eliza*, John Bas, master, her cargo, etc., in which he set forth that the said ship and cargo belonged to citizens of the United States; that they were taken on the high seas, by a French privateer, on the 31st of March, 1799; and that they were retaken by the libellant, on the 21st of April following, after having been above ninety-six hours in possession of the captors. The libel prayed for salvage, conformable to the acts of Congress; and the facts being admitted by the answer of the respondents, the district court decreed to the libellants one-half of the whole value of ship and cargo. This decree was affirmed in the circuit court, without argument, and by consent of the parties, in order to expedite a final decision on the present writ of error.

The controversy involved a consideration of the following sections in two acts of Congress: By an act of the 28th of June, 1798 (1 U. S. Stat. 574, § 2), it is declared, "That whenever any vessel the property of, or employed by, any citizen of the United States, or person resident therein, or any goods or effects belonging to any such citizen or resident, shall be recaptured by any public armed vessel of the United States, the same shall be restored to the former owner or owners, upon due proof, he or they paying and allowing, as and for salvage to the recaptors, one-eighth part of the value of such vessel, goods and effects, free from all deduction and expenses."

By an act of the 2d of March, 1799 (1 U. S. Stat. 716), it is declared, "That for the ships or goods belonging to the citizens of the United States, or to the citizens or subjects of any nation in amity with the United States, if retaken from the enemy within twenty-four hours, the owners are to allow one-eighth part of the whole value for salvage, etc.; and if above ninety-six hours, one-half, all of which is to be paid, without any deduction whatsoever, etc. And by the 9th section of the same act, it is declared, "That all the money accruing, or which has already accrued from the sale of prizes, shall be and remain

forever a fund for the payment of the half-pay to the officers and seamen, who may be entitled to receive the same."

The case was argued by *Lewis* and *E. Tilghman*, for the plaintiff in error, and by *Rawle* and *W. Tilghman*, for the defendant; and the argument turned principally upon two inquiries: 1st. Whether the act of March, 1799, applied only to the event of a future general war? 2d. Whether France was an enemy of the United States, within the meaning of the law?

For the *plaintiff* in error, it was urged, that the acts, passed in immediate relation to France, were of a restricted temporary nature; but that the act of March, 1799, established a permanent system for the government of the navy; and the designation of "the enemy" in that act, applies only to future hostilities, in case of a declared war. That on the just principles of government, every citizen has a right to the public protection; and therefore, no salvage ought, in strictness, to be allowed for the recapture of the property of a citizen by a public ship of war. Vatt. lib. 2, c. 6, § 71. And Congress has manifested, in some degree, their sense on the subject, by making the salvage in that case less than in the case of recapture by a private armed vessel. That the word "enemy" must be construed according to its legal import (1 Str. 278); and that, according to legal interpretation, the differences between the United States and France do not constitute war, nor render the citizens of France enemies of the United States. Vatt. lib. 3, §§ 69, 70; 1 Black. Com. 257; 2 *ibid.* 259; 2 Burl. 258, § 31; 261, § 39; 262. That a subsequent law does not abrogate a prior law, unless it contains contradictory matter; and where there are no negative or repealing words, both must be so construed as to stand together. 11 Co. 61, 63; Show. 439; 10 Mod. 118; 6 Co. 19 *b.* That the act of March, 1799, contains no repealing or negative words; and may be applied, consistently, to the case of a future public war, leaving the qualified state of hostility with France, for the operation of the preceding law.

For the *defendant* in error, it was contended, that the relative situation of the United States and France, is that of "a qualified maritime war;" on the part of the French, aggressive; on our part, defensive; proceeding from a legitimate expression of the public will, through its constitutional organ, the congress, manifested by public declarations

and open acts. That from such a state, the character of enemy necessarily arises; and that the designation being so understood by congress, was intended to be applied, and was actually applied, to France. That the act of March, 1799, speaks of prizes, which could only be such as had been captured from France; and that taking the word prize, according to its legal signification, it means a capture, or acquisition by right of war, in a state of war. 3 Bl. Com. 69, 108; 2 Wood. 441; Doug. 585, 591; Rob. Adm. 283. That if a prize means a capture in war, it follows, of course, that it means a capture from an enemy; for war can only be waged against enemies. That war may exist, without a declaration; a defensive war requires no declaration; and an imperfect or qualified public war, is still distinct from the case of letters of marque and reprisal, for the redress of a private wrong, by the employment of a private force. 1 Ruth., lib. 1, c. 19, § 1, p. 470-1; 2 *ibid.* 497-8, 503, 507, 511; Burl. 196, 189; Vatt. 475; 2 Burl. 204, § 7; Lee on Capt. 13-39; Puff. 843; Grot., lib. 3, c. 3, § 6; Molloy, 46. That congress, by repealing the regulations respecting salvage, contained in the act of March, 1798, has virtually declared, that those regulations were in force, in relation to France; and that the provisions in the act of March, 1799, being inconsistent with the provision in the act of June, 1798, the elder law is so far repealed.¹

The judges delivered their opinions *seriatim* in the following manner:

MOORE, Justice.—This case depends on the construction of the act for the regulation of the navy. It is objected, indeed, that the act applies only to future wars; but its provisions are obviously applicable to the present situation of things, and there is nothing to prevent an immediate commencement of its operation.

It is, however, more particularly urged, that the word "enemy" can not be applied to the French; because the section in which it is used, is confined to such a state of war, as would authorize a recapture of property belonging to a nation in amity with the United States, and such a state of war, it is said, does not exist between America and France. A number of books have been cited to furnish a glossary on the word enemy; yet, our situation is so extraordinary, that I doubt

¹All the acts of Congress, passed in relation to France, were cited and discussed by both sides, in the course of the argument; but it is thought unnecessary to refer to them more particularly in this report.

whether a parallel case can be traced in the history of nations. But if words are the representatives of ideas, let me ask, by what other word, the idea of the relative situation of America and France could be communicated, than by that of hostility or war? And how can the characters of the parties engaged in hostility or war, be otherwise described, than by the denomination of enemies? It is for the honor and dignity of both nations, therefore, that they should be called enemies; for it is by that description alone, that either could justify or excuse the scene of bloodshed, depredation and confiscation, which has unhappily occurred; and surely, Congress could only employ the language of the act of June 13, 1798, towards a nation whom she considered as an enemy.

Nor does it follow, that the act of March, 1799, is to have no operation, because all the cases in which it might operate, are not in existence at the time of passing it. During the present hostilities, it affects the case of recaptured property belonging to our own citizens, and in the event of a future war, it might also be applied to the case of recaptured property belonging to a nation in amity with the United States. But it is further to be remarked, that all the expressions of the act may be satisfied, even at this very time: for by former laws, the recapture of property, belonging to persons resident within the United States, is authorized; those residents may be aliens; and if they are subjects of a nation in amity with the United States, they answer completely the description of the law.

The only remaining objection, offered on behalf of the plaintiff in error, supposes, that, because there are no repealing or negative words, the last law must be confined to future cases, in order to have a subject for the first law to regulate. But if two laws are inconsistent (as, in my judgment, the laws in question are), the latter is a virtual repeal of the former, without any express declaration on the subject.

On these grounds, I am clearly of opinion, that the decree of the circuit court ought to be affirmed.

WASHINGTON, Justice.—It is admitted, on all hands, that the defendant in error is entitled to some compensation: but the plaintiff in error contends, that the compensation should be regulated by the act of the 28th June, 1798 (1 U. S. Stat. 574, § 2), which allows only one-eighth for salvage; while the defendant in error refers his claim to the act of the 2d March (*ibid.* 716, § 7), which makes an allowance of

one-half, upon a recapture from the enemy, after an adverse possession of ninety-six hours. If the defendant's claim is well founded, it follows, that the latter law must virtually have worked a repeal of the former; but this has been denied, for a variety of reasons:

1st. Because the former law relates to recaptures from the French, and the latter law relates to recaptures from the enemy; and it is said, that "the enemy" is not descriptive of France or of her armed vessels, according to the correct and technical understanding of the word.

The decision of this question must depend upon another; which is, whether, at the time of passing the act of Congress of the 2d of March, 1799, there subsisted a state of war between the two nations? It may, I believe, be safely laid down, that every contention by force, between two nations, in external matters, under the authority of their respective governments, is not only war, but public war. If it be declared in form, it is called solemn, and is of the perfect kind; because one whole nation is at war with another whole nation; and all the members of the nation declaring war are authorized to commit hostilities against all the members of the other, in every place and under every circumstance. In such a war, all the members act under a general authority, and all the rights and consequences of war attach to their condition.

But hostilities may subsist between two nations, more confined in its nature and extent; being limited as to places, persons and things; and this is more properly termed imperfect war; because not solemn, and because those who are authorized to commit hostilities act under special authority, and can go no further than to the extent of their commission. Still, however, it is public war, because it is an external contention by force, between some of the members of the two nations, authorized by the legitimate powers. It is a war between the two nations, though all the members are not authorized to commit hostilities, such as in a solemn war, where the government restrain the general power.

Now, if this be the true definition of war, let us see, what was the situation of the United States in relation to France. In March, 1799, Congress had raised an army; stopped all intercourse with France; dissolved our treaty; built and equipped ships of war; and commissioned private armed ships; enjoining the former, and authorizing the latter, to defend themselves against the armed ships of France, to attack them on the high seas, to subdue and take them as prize, and

to recapture armed vessels found in their possession. Here, then, let me ask, what were the technical characters of an American and French armed vessel, combating on the high seas, with a view, the one to subdue the other, and to make prize of his property? They certainly were not friends, because there was a contention by force; nor were they private enemies, because the contention was external, and authorized by the legitimate authority of the two governments. If they were not our enemies, I know not what constitutes an enemy.

2d. But secondly, it is said, that a war of the imperfect kind, is more properly called acts of hostility or reprisal, and that Congress did not mean to consider the hostility subsisting between France and the United States, as constituting a state of war. In support of this position, it has been observed, that in no law, prior to March, 1799, is France styled our enemy, nor are we said to be at war. This is true; but neither of these things were necessary to be done: because, as to France, she was sufficiently described by the title of the French Republic; and as to America, the degree of hostility meant to be carried on, was sufficiently described, without declaring war, or declaring that we were at war. Such a declaration by Congress, might have constituted a perfect state of war, which was not intended by the government.

3d. It has likewise been said, that the 7th section of the act of March, 1799, embraces cases which, according to preexisting laws, could not then take place, because no authority had been given to recapture friendly vessels from the French; and this argument was strongly and forcibly pressed. But because every case provided for by this law was not then existing, it does not follow, that the law should not operate upon such as did exist, and upon the rest, whenever they should arise. It is a permanent law, embracing a variety of subjects, not made in relation to the present war with France only, but in relation to any future war with her, or with any other nation. It might then very properly allow salvage for recapturing of American vessels from France, which had previously been authorized by law, though it could not immediately apply to the vessels of friends: and whenever such a war should exist between the United States and France, or any other nation, as, according to the law of nations, or special authority, would justify the recapture of friendly vessels, it might, on that event, with similar propriety, apply to them, which furnishes, I think, the true construction of the act. The opinion which I delivered at New York,

in *Talbot v. Seeman*, was, that although an American vessel could not justify the retaking of a neutral vessel from the French, because neither the sort of war that subsisted, nor the special commission under which the American acted, authorized the proceeding; yet, that the 7th section of the act of 1799, applied to recaptures from France, as an enemy, in all cases authorized by Congress. And on both points, my opinion remains unshaken; or rather has been confirmed by the very able discussion which the subject has lately undergone in this court, on the appeal from my decree.

Another reason has been assigned by the defendant's counsel, why the former law is not to be regarded as repealed by the latter, to wit, that a subsequent affirmative general law can not repeal a former affirmative special law, if both may stand together. This ground is not taken, because such an effect involves an indecent censure upon the legislature for passing contradictory laws, since the censure only applies where the contradiction appears in the same law; and it does not follow, that a provision which is proper at one time, may not be improper at another, when circumstances are changed: but the ground of argument is, that a change ought not to be presumed. Yet, if there is sufficient evidence of such a change in the legislative will, and the two laws are in collision, we are forced to presume it. What, then, is the evidence of legislative will? In fact and in law, we are at war: an American vessel, fighting with a French vessel, to subdue and make her prize, is fighting with an enemy, accurately and technically speaking: and if this be not sufficient evidence of the legislative mind, it is explained in the same law. The sixth and the ninth sections of the act speak of prizes, which can only be of property taken at sea from an enemy, *jure belli*; and the ninth section speaks of prizes as taken from an enemy, in so many words, alluding to prizes which had been previously taken; but no prize could have been then taken except from France: prizes taken from France were, therefore, taken from the enemy. This then, is a legislative interpretation of the word enemy; and if the enemy, as to prizes, surely they preserve the same character as to recaptures.

Besides, it may be fairly asked, why should the rate of salvage be different in such a war as the present, from the salvage in a war more solemn or general? And it must be recollected, that the occasion of making the law of March, 1799, was not only to raise the salvage, but to apportion it to the hazard in which the property retaken was placed;

a circumstance for which the former salvage law had not provided. The two laws, upon the whole, can not be rendered consistent, unless the court could wink so hard as not to see and know, that in fact, in the view of Congress, and to every intent and purpose, the possession by a French armed vessel of an American vessel, was the possession of an enemy: and therefore, in my opinion, the decree of the circuit court ought to be affirmed.

CHASE, Justice.—The judges agreeing unanimously in their opinion, I presumed, that the sense of the court would have been delivered by the president and therefore, I have not prepared a formal argument on the occasion. I find no difficulty, however, in assigning the general reasons which induce me to concur in affirming the decree of the circuit court.

An American public vessel of war recaptures an American merchant vessel from a French privateer, after ninety-six hours possession, and the question is stated, what salvage ought to be allowed? There are two laws on the subject: by the first of which, only one-eighth of the value of the recaptured property is allowed; but by the second, the recaptor is entitled to a moiety. The recapture happened after the passing of the latter law; and the whole controversy turns on the single question, whether France was, at that time, an enemy? If France was an enemy, then the law obliges us to decree one-half of the value of the ship and cargo for salvage: but if France was not an enemy, then no more than one-eighth can be allowed.

The decree of the circuit court (in which I presided) passed by consent; but although I never gave an opinion, I have never entertained a doubt on the subject. Congress is empowered to declare a general war, or Congress may wage a limited war; limited in place, in objects, and in time. If a general war is declared, its extent and operations are only restricted and regulated by the *jus belli*, forming a part of the law of nations; but if a partial war is waged, its extent and operation depend on our municipal laws.

What, then, is the nature of the contest subsisting between America and France? In my judgment, it is a limited, partial war. Congress has not declared war, in general terms; but Congress has authorized hostilities on the high seas, by certain persons, in certain cases. There is no authority given to commit hostilities on land; to capture unarmed French vessels, nor even to capture French armed

vessels, lying in a French port; and the authority is not given indiscriminately to every citizen of America, against every citizen of France, but only to citizens appointed by commissions, or exposed to immediate outrage and violence. So far it is, unquestionably, a partial war; but, nevertheless, it is a public war, on account of the public authority from which it emanates.

There are four acts, authorized by our government, that are demonstrative of a state of war. A belligerent power has a right, by the law of nations, to search a neutral vessel; and upon suspicion of a violation of her neutral obligations, to seize and carry her into port for further examination. But by the acts of Congress, an American vessel is authorized: 1st. To resist the search of a French public vessel: 2d. To capture any vessel that should attempt, by force, to compel submission to a search: 3d. To recapture any American vessel, seized by a French vessel: and 4th. To capture any French armed vessel, wherever found, on the high seas. This suspension of the law of nations, this right of capture and recapture, can only be authorized by an act of the government, which is, in itself, an act of hostility. But still, it is a restrained or limited hostility; and there are, undoubtedly, many rights attached to a general war, which do not attach to this modification of the powers of defense and aggression. Hence, whether such shall be the denomination of the relative situation of America and France, has occasioned great controversy at the bar; and it appears, that Sir William Scott also was embarrassed in describing it, when he observed, "that in the present state of hostility (if so it may be called) between America and France," it is the practice of the English court of admiralty, to restore recaptured American property, on payment of a salvage. (*The Santa Cruz*, 1 Rob. 54.) But, for my part, I can not perceive the difficulty of the case. As there may be a public general war, and a public qualified war; so there may, upon correspondent principles, be a general enemy, and a partial enemy. The designation of "enemy" extends to a case of perfect war; but as a general designation, it surely includes the less, as well as the greater, species of warfare. If Congress had chosen to declare a general war, France would have been a general enemy; having chosen to wage a partial war, France was, at the time of the capture, only a partial enemy; but still she was an enemy.

It has been urged, however, that Congress did not intend the provisions of the act of March, 1799, for the case of our subsisting quali-

fied hostility with France, but for the case of a future state of general war with any nation: I think, however, that the contrary appears from the terms of the law itself, and from the subsequent repeal. In the 9th section, it is said, that all the money accruing, "or which has already accrued from the sale of prizes," shall constitute a fund for the half-pay of officers and seamen. Now, at the time of making this appropriation, no prizes (which *ex vi termini* implies a capture in a state of war) had been taken from any nation but France, those which had been taken, were not taken from France as a friend; they must, consequently, have been taken from her as an enemy; and the retrospective provision of the law can only operate on such prizes. Besides, when the 13th section regulates "the bounty given by the United States on any national ship of war, taken from the enemy, and brought into port," it is obvious, that even if the bounty has no relation to previous captures, it must operate from the moment of passing the act, and embraces the case of a national ship of war, taken from France as an enemy, according to the existing qualified state of hostilities. But the repealing act, passed on the 3d of March, 1800 (subsequent to the recapture in the present case) ought to silence all doubt as to the intention of the legislature; for, if the act of March, 1799, did not apply to the French Republic, as an enemy, there could be no reason for altering or repealing that part of it, which regulates the rate of salvage on recaptures.

The acts of Congress have been analyzed, to show, that a war is not openly denounced against France, and that France is nowhere expressly called the enemy of America: but this only proves the circumspection and prudence of the legislature. Considering our national prepossessions in favor of the French Republic, Congress had an arduous task to perform, even in preparing for necessary defense and just retaliation. As the temper of the people rose, however, in resentment of accumulated wrongs, the language and the measures of the government became more and more energetic and indignant; though hitherto the popular feeling may not have been ripe for a solemn declaration of war; and an active and powerful opposition in our public councils, has postponed, if not prevented, that decisive event, which many thought would have best suited the interest, as well as the honor, of the United States. The progress of our contest with France, indeed, resembles much the progress of our revolutionary contest; in which, watching the current of public sentiment, the patriots of that day pro-

ceeded, step by step, from the supplicatory language of petitions for a redress of grievances, to the bold and noble declaration of national independence. Having, then, no hesitation in pronouncing that a partial war exists between America and France, and that France was an enemy, within the meaning of the act of March, 1799, my voice must be given for affirming the decree of the circuit court.

PATERSON, Justice.—As the case appears on the record, and has been accurately stated by the counsel, and by the judges who have delivered their opinions, it is not necessary to recapitulate the facts. My opinion shall be expressed in a few words. The United States and the French Republic are in a qualified state of hostility. An imperfect war, or a war, as to certain objects, and to a certain extent, exists between the two nations; and this modified warfare is authorized by the constitutional authority of our country. It is a war *quoad hoc*. As far as Congress tolerated and authorized the war on our part, so far may we proceed in hostile operations. It is a maritime war, a war at sea, as to certain purposes. The national armed vessels of France attack and capture the national armed vessels of the United States; and the national armed vessels of the United States are expressly authorized and directed to attack, subdue and take the national armed vessels of France, and also to recapture American vessels. It is, therefore, a public war between the two nations, qualified on our part, in the manner prescribed by the constitutional organ of our country. In such a state of things, it is scarcely necessary to add, that the term "enemy," applies; it is the appropriate expression, to be limited in its signification, import and use, by the qualified nature and operation of the war on our part. The word enemy proceeds the full length of the war, and no further. Besides, the intention of the legislature as to the meaning of this word, enemy, is clearly deducible from the act for the government of the navy, passed the 2d of March, 1799. This act embraces the past, present and future, and contains passages which point the character of enemy at the French, in the most clear and irresistible manner. I shall select one paragraph, namely, that which refers to prizes taken by our public vessels, anterior to the passing of the latter act. The word prizes in this section can apply to the French, and the French only. This is decisive on the subject of legislative intention.

BY THE COURT.—Let the decree of the circuit court be affirmed.

TALBOT v. SEEMAN, (*THE AMELIA*)¹*Salvage.—Partial war.—Foreign laws*

Salvage allowed to the United States ship of war, for the recapture of a Hamburg vessel out of the hands of the French (France and Hamburg being neutral to each other), on the ground that she was in danger of condemnation under the French decree of the 18th January, 1798.

The United States and France, in the year 1799, were in a state of partial war. To support a demand for salvage, the recapture must be lawful, and a meritorious service must be rendered.

Probable cause is sufficient to render the recapture lawful.

Where the amount of salvage is not regulated by statute, it must be determined by the principles of general law.

Marine ordinances of foreign countries, promulgated by the executive, by order of the legislature of the United States, may be read in the courts of the United States, without further authentication or proof.

Municipal laws of foreign countries are generally to be proved as facts.

This was a writ of error to reverse a decree of the Circuit Court, which reversed the decree of the District Court of New York, so far as it allowed salvage to the recaptors of the ship *Amelia* and her cargo.

The libel in the district court was filed November 5, 1799, by Captain Talbot, in behalf of himself and the other officers and crew of the United States ship of war the *Constitution*, against the ship *Amelia*, her tackle, furniture and cargo; and set forth—

1. That in pursuance of instructions from the President of the United States he subdued, seized, etc., on the high seas, the said ship *Amelia* and cargo, etc., and brought her into the port of New York.

2. That at the time of capture, she was armed with eight carriage-guns, and was under the command of citizen Etienne Prevost, a French officer of marine, and had on board, besides the commander, eleven French mariners. That the libellant had been informed, that she, being the property of some person to him unknown, sailed from Calcutta, an English port in the East Indies, bound for some port in Europe; that upon her said voyage she was met with and captured by a French national corvette, called *La Diligente*, commanded by L. J. Dubois, who took out of her the master and crew of the *Amelia*, with all the papers relating to her and her cargo, and placed the said Etienne Prevost, and the said French mariners, on board of her, and ordered her to St. Domingo for adjudication, as a good and lawful

¹ Cranch, 1.

prize; and that she remained in the full and peaceable possession of the French from the time of her capture, for the space of ten days, whereby, the libellant was advised, that, as well by the law of nations as by the particular laws of France, the said ship became, and was to be considered, as a French ship.

Whereupon, he prayed usual process, etc., and condemnation; or, in case restoration should be decreed, that it might be on payment of such salvage as by law ought to be paid for the same.

The claim and answer of Hans Frederic Seeman, in behalf of Messrs. Chapeau Rouge & Co., of Hamburg, owners of the ship *Amelia* and her cargo, stated, that the said ship, commanded by Jacob F. Engelbrecht, as master, sailed on the 20th of February, 1798, from Hamburg, on a voyage to the East Indies, where she arrived safe; that in April, 1799, she left Calcutta, bound to Hamburg; that during her voyage, and at the time of her capture by the French, she and her cargo belonged to Messrs. Chapeau Rouge & Co., citizens of Hamburg, and if restored, she will be wholly their property; that on the 6th of September, on her voyage home, she was captured on the high seas by a French armed vessel, commanded by citizen Dubois, who took out the master and thirteen of her crew, and all her papers, leaving on board the claimant, who was mate of the *Amelia*, the doctor and five other men. That the French commander put on board twelve hands, and ordered her to St. Domingo, and parted from her on the fifth day after her capture. That on the 15th of September, the *Amelia*, while in possession of the French, was captured, without any resistance on her part, by the said ship of war the *Constitution*, and brought into New York. That the *Amelia* had eight carriage guns, it being usual for all vessels, in the trade she was carrying on, to be armed, even in times of general peace. That there being peace between France and Hamburg, at the time of the first capture, and also between the United States and Hamburg, and between the United States and France, the possession of the *Amelia* by the French, in the manner, and for the time stated in the said libel, could, neither by the law of nations, nor by the laws of France, nor by those of the United States, change the property of the said ship *Amelia* and her cargo, or make the same liable to condemnation in a French court of admiralty; that the same could not, therefore, be considered as French property: wherefore, he prayed restoration in like plight as at the time of capture by the ship *Constitution*, with costs and charges.

On the 16th of December, 1799, the district judge, by consent of parties made an interlocutory decree, directing the marshal to sell the ship and cargo, and bring the money into court; and that the clerk should pay half of the amount of sales to the claimant, on his giving security to refund, in case the court should so decree; and that the clerk should retain the other half in his hands, together with all costs and charges, etc.

Afterwards, on the 25th of February, 1800, the judge of the district court (Hobart) made his final decree, directing half of the gross amount of sales of the ship and cargo, without any deduction whatever, to be paid to the libellant for the use of the officers and crew of the ship *Constitution*, to be distributed according to the act of Congress for the government of the navy of the United States. And that out of the other moiety, the clerk should pay the officers of the court, and the proctors for the libellant and claimant, their taxed costs and charges, and that the residue should be paid to the owners of the *Amelia*, or their agent. From this decree, the claimant appealed to the circuit court.

At the Circuit Court for the district of New York, in April, 1800, before Judge WASHINGTON and the district judge, the cause was argued by *B. Livingston* and *Burr* for the appellant, and *Harrison* and *Hamilton*, for the respondent; and on the 9th of April, 1800, the circuit court made the following decree, viz.:

That the decree of the district court, so far forth as it orders a payment, by the clerk, of a moiety of the gross amount of sales, to Silas Talbot, commander, etc., and to the officers and crew of the said ship *Constitution*, is erroneous, and so far forth, be reversed without costs; that is to say, the court considering the admission on the part of the respondent, that the papers brought here by Jacob Frederic Engelbrecht, master of the ship *Amelia*, prove her and her cargo to be Hamburg property, and also considering that as the nation to which the owners of the said ship and cargo belong, is in amity with the French Republic, the said ship and cargo could not, consistently with the laws of nations, be condemned by the French as a lawful prize, and that, therefore, no service was rendered by the United States ship of war the *Constitution*, or by the commander, officers or crew thereof, by the recapture aforesaid.

Whereupon, it is ordered, adjudged and decreed by the court, and it is hereby ordered, adjudged and decreed by the authority of the same, that the former part of the decree of the district

court, by which a moiety of the proceeds is allowed to the commander, officers and crew aforesaid, be and the same is hereby reversed. And the court further considering all the circumstances of the present case, arising from the capture and recapture stated in the libel and claim and answer, and that by the sale of the said ship *Amelia* and her cargo, made with the express consent of the appellant, the costs and charges in this cause have nearly all accrued, and that, therefore, the expenses should be defrayed out of the proceeds, thereupon, it is hereby further ordered, adjudged and decreed by the court, that so much of the said decree of the said district court as relates to the payment by the clerk, to the several officers of the court, and to the proctors of the libellant and claimant in this cause, of their taxed costs and charges, out of the other moiety of the said proceeds, and also of the residue of the said last-mentioned moiety, after deducting the costs and charges aforesaid, to the owner or owners of the said ship *Amelia* and her cargo, or to their legal representatives, be and the same is hereby affirmed.

To reverse this decree, the libellant sued out a writ of error to the Supreme Court, and by consent of parties, the following statement of facts was annexed to the record which came up:

The ship *Amelia* sailed from Calcutta, in Bengal, in the month of April, 1799, loaded with a cargo of the product and manufacture of that country, consisting of cotton, sugars and dry goods in bales, and was bound to Hamburg. On the 6th of September, in the same year, she was captured, while in the pursuit of her said voyage, by the French national corvette *La Diligente*, L. J. Dubois, commander, who took out her master and part of her crew, together with most of her papers, and placed a prize-master and French sailors on board of her, ordering the prize-master to conduct her to St. Domingo, to be judged according to the laws of war. On the 15th of the same month of September, the United States ship of war the *Constitution*, commanded by Silas Talbot, Esq., the libellant, fell in with and recaptured the *Amelia*, she being then in full possession of the French, and pursuing her course for St. Domingo, according to the orders received from the captain of the French corvette.

At the time of the recapture, the *Amelia* had eight iron cannon mounted, and eight wooden guns, with which she left Calcutta, as before stated. From such of the ship's papers as were found on board, and the testimony in the cause, the ship *Amelia* and her cargo appear to have been the property of Chapeau Rouge, a citizen of Hamburg, residing and carrying on commerce in that place. It is conceded, that the Republic of France and the city of

Hamburg are not in a state of hostility to each other; and that Hamburg is to be considered as neutral between the present belligerent powers.

The *Amelia* and her cargo, having been sent by Captain Talbot to New York, were there libelled in the district court, and such proceedings were thereupon had in that court, and the circuit court for that district, as may appear by the writ of error and return.

The cause now came on to be argued, at August term, 1801, by *Bayard* and *Ingersoll*, for the libellant, and *Dallas*, *Mason* and *Levy*, for the claimant.

For the *libellant*, three points were made. 1. That at the time, and under the circumstances, the ship *Amelia* was liable to capture by the law, and instructions to seize French armed vessels, for the purpose of being brought into port, and submitted to legal adjudication in the courts of the United States. 2. That Captain Talbot, by this capture, saved the ship *Amelia* from condemnation in a French court of admiralty. 3. That for this service, upon abstract principles of equity and justice, according to the law of nations, and the acts of Congress, the recaptors are entitled to a compensation for salvage.

I. Had Captain Talbot a right to seize the *Amelia*, and bring her into port for adjudication?

The acts of Congress on this subject ought all to be considered together and in one view. This is the general rule of construction, where several acts are made *in pari materia*. Plowd. 206; 1 Atk. 457, 458.

The first act authorizing captures of French vessels, is that of 28th May, 1798. (1 U. S. Stat. 561.) The preamble recites, that "whereas, armed vessels sailing under authority, or pretense of authority, from the Republic of France, have committed depredations on the commerce of the United States," etc., therefore it is enacted, that the President be authorized to instruct and direct the commanders of the armed vessels of the United States "to seize, take and bring into any port of the United States, to be proceeded against according to the laws of nations, any such armed vessel, which shall have committed, or which shall be found hovering on the coasts of the United States, for the purpose of committing, depredations on the vessels belonging to citizens thereof; and also to retake any ship or vessel of any citizen

or citizens of the United States, which may have been captured by any such armed vessel."

The *Amelia* was "an armed vessel, sailing under authority from the Republic of France," and if she had committed, or had been found hovering on the coast, for the purpose of committing, depredations on the vessels of the citizens of the United States, she would have been clearly liable to capture under this act of Congress. This act is entitled "an act more effectually to protect the commerce and coasts of the United States;" and by it, the objects of capture are limited to "armed vessels, sailing under authority, or pretense of authority, from the Republic of France, which shall have committed, or which shall be found hovering on the coasts of the United States, for the purpose of committing, depredations," etc.

It was soon perceived, that a right of capture, so limited, would not afford, what the act contemplated, an effectual protection to the commerce of the United States. Congress, therefore, on the 9th July, 1798, at the same session, passed the "act further to protect the commerce of the United States" (1 U. S. Stat. 578), and thereby took off the restriction of the former act, which limited captures to vessels having actually committed depredation, or which were hovering on the coast for that purpose. This act authorizes the capture of any "armed French vessel, on the high seas," and if the *Amelia* was such an armed French vessel as is contemplated by this act, she was liable to capture, and it was the duty of Captain Talbot to take her and bring her into port.

Another act was passed at the same session, on the 25th June, 1798 (1 U. S. Stat. 572), entitled "an act to authorize the defense of the merchant vessels of the United States against French depredations," which, as it constitutes a part of that system of defense and opposition which the legislature had in view, ought to be taken into consideration. It enacts, that merchant vessels of citizens of the United States may oppose and defend against any search, restraint or seizure which shall be attempted "by the commander or crew of any armed vessel, sailing under French colors, or acting, or pretending to act, by or under the authority of the French Republic;" and in case of attack, may repel the same, and subdue and capture the vessel.

The court, in construing any one of these laws, will not confine themselves to the strict letter of that particular law, but will consider the spirit of the times, and the object and intention of the legislature.

It is evident, by the title of the act of the 9th July, 1798, and by the general complexion of all the acts of that session upon the subject, that it was not the intention of Congress, by the act of July 9th, to restrict the cases of capture contemplated by the act of 28th May, but to enlarge them. The spirit of the people was roused; they demanded a more vigorous and a more effectual opposition to the aggressions of France, and the spirit of Congress rose with that of the people. It can not be supposed, that having, in May, used the expression, "armed vessels, sailing under authority, or pretense of authority, from the Republic of France," and in June the expression, "any armed vessel, sailing under French colors, or acting, or pretending to act, by or under the authority of the French Republic," they meant to restrict the cases of capture, in July, when they used the words "any armed French vessel." On the contrary, the confidence in the national opinion was increased, and further measures of defense were adopted, intending not to recede from anything done before, but to amplify the opposition. The act of July was in addition to, not in derogation from, the act of May. Congress evidently meant the same description of vessels, in each of those acts. "Armed vessels, sailing under authority, or pretense of authority, of France," and "armed vessels sailing under French colors, or acting, or pretending to act, under the authority of the French Republic," and "armed French vessels," must be understood to be the same.

If there is a difference, no reason can be given for it. A vessel, in the circumstances of the *Amelia*, was as capable of annoying our commerce, as if she had been owned by Frenchmen. Her force was at the command of France, and there can be no doubt, but she would have captured any unarmed American that might have fallen in her way. She was, therefore, one of the objects of that hostility which Congress had authorized. Congress have the power of declaring war: they may declare a general war or a partial war: so, it may be a general maritime war, or a partial maritime war.

This court, in the case of *Bas v. Tingy* (*The Eliza*, 4 Dall. 37), have decided, that the situation of this country with regard to France, was that of a partial and limited war. The substantial question here is, whether the case of the *Amelia* is a *casus belli*? whether she was an object of that limited war? The kind of war which existed was a war against all French force found upon the ocean, to seize it and bring it in, that it might not injure our commerce. It is precisely as if Con-

gress had authorized the capture of all French vessels, excepting those unarmed. If such had been the expressions, there could be no doubt of the right to capture. The object of the war being to destroy French armed force, and not French property, it made no difference in whom the absolute property of the vessel was, if her force was under the command of France. Suppose, the *Amelia* had captured an American, by what nation would the capture be made? by Hamburg or by France? There can be no doubt, but the injury would be attributed to France. She was under French colors, armed, and to every intent an object of the partial war which existed; and if so, her case is governed by the rights of war, and by the law of nations, as they exist in a state of general war.

Perhaps, it may be said, that this proves too much, and that, if true, the *Amelia* must be condemned as prize. This would be true, if the rights of a third party did not interfere. Having accomplished the object of the war, as it relates to this case, in wresting from France the armed force, we must now respect the rights of a neutral nation, and restore the property to its lawful owner. But this is a subsequent consideration: it is only necessary now to show that the capture was so far a lawful act, as to be capable of supporting a claim of salvage. At first view, she certainly presented the appearance of such an armed French ship as the libellant was bound in duty to seize and bring in, at least, for further examination. He had probable cause, at least, which is sufficient to justify the seizure and detention. But if she was liable to be condemned by France, being in the hands and possession of the French, she was within the scope of the war which existed between the United States and France; she was within the meaning of the act of Congress.¹

The act of July gives no new authority to recapture American vessels; it only gives to private armed vessels the same right which the act of May gives to the public armed vessels, to make captures and recaptures. But the act of May only authorizes the recapture of American vessels, "which may have been captured by any such armed vessel," i. e., by armed vessels sailing under authority from the Republic of

¹*Bayard*.—What authority is there for American armed vessels to recapture British vessels taken by the French?

CHASE, J.—Is there any case, where it has been decided in our courts, that such a recapture was lawful? It has been so decided in the English courts.

The counsel on both sides admitted that no such case had occurred in this country.

France, and which shall have committed, or be found hovering on the coasts, for the purpose of committing, depredations on our commerce." Yet, the instructions from the President were to recapture all American vessels. These instructions show the opinion of the executive upon the construction of the acts of Congress—and for that purpose they were offered to be read.

The counsel for the *claimant* objected to their being read, because they were not in the record. The counsel for the *libellant* contended, they had a right to read them as matter of opinion, but did not offer them as matter of fact.¹ The court refused to hear them.

II. The second point is, that a service was rendered to the owners of the *Amelia*, by the recapture, inasmuch as she was thereby saved from condemnation in a French court of admiralty. To support this position, the counsel for the *libellant* relied on the general system of violation of neutral rights adopted by France.

In general cases, when belligerents respect the law of nations, no salvage can be claimed for the recapture of a neutral vessel, because no service is rendered; but rather a disservice, because the captured would, in the courts of the captors, recover damages and costs for the illegal capture and detention.

The principle upon which the circuit court decided, is not denied; but it is contended, that a service was rendered by the recapture. To show this, the counsel for the *libellant* offered to read the message from the President to both Houses of Congress, of 4th May, 1798, containing the communications from our envoys extraordinary at Paris, to the Department of State, and sundry *arrêts* and decrees of

¹CHASE, J.—I am against reading the instructions, because I am against bringing the executive into court on any occasion. It has been decided, as I think, in this court that instructions should not be read. I think it was in a case of instructions to the collectors. It was opposed by Judge Iredell, and the opposition acquiesced in by the court.

PATERSON, J.—The instructions can only be evidence of the opinion of the executive, which is not binding upon us.

MARSHALL, C. J.—I have no objection to hearing them, but they will have no influence on my opinion.

MOORE, J.—Mr. Bayard can state all they contain, and they may be considered as part of his argument.

Bayard.—May I be permitted to read them as a part of my speech?

THE COURT.—We are willing to hear them as the opinion of Mr. Bayard, but not as the opinion of the executive.

Bayard.—I acquiesce in the opinion of the court. My reasons for wishing to read them were, because the opinion of learned men, and men of science, will always have some weight with other learned men. And the court would consider well the opinion of the executive, before they would decide contrary to it.

the Government of France, in violation of neutral rights, and of the law of nations; and particularly the decree of the council of five hundred of 29th Nivose, an 6 (Jan. 18, 1798), which declares, "that the character of vessels, relative to their quality of neuter or enemy, shall be determined by their cargo; in consequence, every vessel found at sea, loaded, in whole or in part, with merchandise, the production of England, or of her possessions, shall be declared good prize, whoever the owner of these goods or merchandise may be."

The counsel for the *claimant* objected to the reading of those dispatches, because they were matter of fact. No new fact can be shown on the writ of error. Neither the pleadings, nor the statement of facts accompanying the record, give notice of introducing this new matter. By the act of Congress (1 U. S. Stat. 83, § 19), a state of the case must come up with the record; and is conclusive on this court. *Wiscart v. D'Auchy*, 3 Dall. 321. On p. 327, Ellsworth, Chief Justice, said a writ of error removes only matter of law. *Arrêts* and decrees of foreign governments are matters of fact, and must be proved as such, and the court can not notice them unless shown in the pleadings, admitted or proved. *Freemoult v. Dedire*, 1 P. Wms. 429, 431; *Bernardi v. Motteux*, Doug. 557. The same case in the 2d edition, pp. 575-79. In that case, the court could not take notice of the *arrêt* of July, 1778, as it had not been given in evidence at the trial.

The general conduct of France is a matter of fact, which can only be noticed by the sovereign of the state. Judgment upon a writ of error must be upon the same facts upon which the judgment below was predicated. 3 Bl. Com. 405 (Williams's edit. 407); 8 T. R. 434, 438, 566. If it is matter of law, it is not such law as is binding upon this court, and therefore, they can not officially take notice of it. Foreign laws must be proved as facts. 3 Woodeson, 306; 2 Eq. Cas. Abr. 289, 476; *Way v. Yally*, 2 Salk. 651; s. c. 6 Mod. 195; *Mostyn v. Fabrigas*, Cowp. 174-5. The law must be given in evidence. 1 Bos. & Pul. 138, 171, 175, 8 T. R. 566. Facts can not be adduced to contradict the record. 8 T. R. 438. In *The Providentia*, 2 Rob. 126 (Am. edit.), Dr. Scott relied on the king's instructions, but that was because the king has the power of war and peace.

A state of the case is like a special verdict; nothing new can be added to it. In *The Santa Cruz*, 1 Rob. 57, Dr. Scott required the ordinances of Portugal to be proved, and evidence of the decisions of their tribunals upon them.

On the contrary, it was said by the counsel for the *libellant*, that this case differs from evidence offered to a jury. In chancery, if evidence is not legal, the chancellor will hear it, but will give it no weight. The pamphlet containing the dispatches is offered to be read, not to show what are the municipal laws of France, but what is the law of nations in France; to show how it has been modified by that government. We are before this court as a court of admiralty, and not as a court of common law. All the world are parties to a decree of a court of admiralty. *Bernardi v. Motteux*, Doug. 560 or 581. This court is now to decide by the law of nations, not by municipal regulations. All the cases cited against us are cases in common-law courts. But courts of admiralty take notice of foreign ordinances which affect the law of nations, without their being shown in evidence. *The Maria*, 1 Rob. 288 (Eng. ed. 341); and s. c. 1 Rob. 304 (Eng. ed. 363).

The object in reading these dispatches is to show that the law of nations was not respected in France; that the construction of their courts of admiralty was such, that their decisions could not conform to the law of nations; that the law of nations has been so modified in France, that there was no certainty of indemnity for neutrals, and that by the decrees and *arrêts* of that government, the *Amelia* would have been condemned. They are offered as the official communications of our authorized agents abroad to the executive, and by that department communicated to Congress, and published, in conformity to an act of Congress (1 U. S. Stat. 612), for the information of the citizens of the United States. This act of Congress has made them proper evidence before this court; who are, therefore, bound to notice them. On the subject of admitting foreign ordinances in a court of admiralty, no difficulty ever occurred. The objections are only to private municipal regulations. Such, it is admitted, must be proved as facts, but not when they are offered as explaining the law of nations. In *The Maria*, 1 Rob. 288 (Am. ed.), this very decree is cited; and it is immaterial to us, whether we read it out of the dispatches or out of the book which the opposite counsel have already cited for other purposes. By the same rule that they read pages 57 and 126, we may surely read page 288.

On the part of the *claimant* it was replied: That this decree is not an act of Congress, nor the law of nations, but simply a law of France. The record is confined to the facts which originally came up with the

writ of error, or such as may afterwards be procured upon a suggestion of diminution. It is admitted, that in equity, on an appeal to the House of Lords, nothing new can be received. And nothing ought now to be read which was not before the circuit court, or which that court was bound to notice. In the cases cited by the opposite counsel, the *arrêts* were read by consent. A common-law court is as much bound as a court of admiralty, to take notice of the law of nations, on a question where that law applies; and the rules by which common-law courts are bound, as to evidence of the law of nations, are equally binding on courts of admiralty.

The court suffered the dispatches and decrees of France to be read, but reserved the question, whether they ought to be considered in their decision of this cause, until the whole argument of the case should be finished.

The counsel for the *libellant* proceeded in the argument on the second point. The decree of the 18th of January, 1798, was not repealed, until the 14th of December, 1799, and consequently, was in full force at the time of the capture, on the 6th of September, 1799. The facts stated in the appendix to vol. 2 of Robinson's Reports, show that the French had discarded the law of nations, and that their conduct towards neutrals had been such as to exclude every possibility of escape. So notorious was this conduct, that Sir William Scott makes it the ground of his decision in various cases.

It is not necessary to show, that the *Amelia* would certainly have been condemned. To entitle to salvage, it is only necessary to show that she was in a better condition by the recapture. Her cargo was the production of the possessions of England, and therefore, by the decree of the 18th January, 1798, was liable to condemnation. The general conduct of France and of the French courts of admiralty towards neutrals has been repeatedly adjudged by Sir William Scott a good ground for salvage. (*The Two Friends*, 1 Rob. 232; *The War Onskan*, 2 *ibid.* 246.)

III. But without resorting to the general principle of a service being a ground for salvage, we claim it under the express terms of the act of Congress of the 2d of March, 1799, entitled "an act for the government of the navy of the United States," § 7 (1 U. S. Stat. 716), by which it is enacted, "that for the ships or goods belonging to the citizens of the United States, or to the citizens or subjects of

any nation in amity with the United States, if retaken from the enemy, within twenty-four hours, the owners are to allow one-eighth part of the whole value for salvage, etc., and if after ninety-six hours, one-half; all of which is to be paid without any deduction whatsoever."

In the case of *Bas v. Tingy* (3 Dall. 37), it was decided by this court, that France was to be considered as an enemy. The case of the *Amelia* comes within the very words of this act of Congress. She is a ship belonging to citizens of a nation in amity with the United States, retaken from the enemy, after a possession of ninety-six hours.

By the act of Congress of 25th June, 1798 (1 U. S. Stat. 572), property of American citizens, recaptured by armed merchant vessels, is to be restored, on the payment of not less than one-eighth, and not more than one-half, for salvage. And by the act of the 3d March, 1800, not less than one-sixth is allowed on recapture by a private armed vessel, and one-eighth by a public ship-of-war. If, then, the recapture of this vessel was a lawful act, and if service was rendered thereby to the owners, the recaptors are entitled to salvage, and the rate of that salvage is, by the act of Congress, fixed at one-half of the value of the ship and cargo.

On the part of the *claimant*, it was said, that if France and America were at peace, the recapture was not authorized by the law of nations. The claim of salvage must rest on two grounds: 1. A right to interfere. 2. A benefit conferred on the owners.

I. It is admitted, that a belligerent has a right to detain a neutral vessel and carry her into port for the purpose of examination. The possession of a belligerent must, by third parties, be considered as lawful, whatever may be the motive or intent of such possession. (2 Woodeson, 424.) The belligerent has a lawful right to search merchant vessels, and this right can not be considered as injurious to the fair neutral trader. Resistance to such search is unlawful, and such resistance, a rescue, or an escape, are sufficient causes to condemn the neutral vessel. (Vattel, lib. 3, c. 7, § 114, p. 507; *The Maria*, 1 Rob. 304.)

The act of the recaptors, then, being in aid of the unlawful resistance of the neutral, must in itself be illegal. The courts of the captors only are competent to decide the question of prize or no prize. American citizens have no right to interfere, and wrest the neutral vessel from the possession of the belligerent.

The French have been represented as pirates, *hostes humani generis*.

But if France has waged so general a war on neutral property, has not England done the same? We find in their courts, that when a benefit is to accrue to British subjects, by such a decision, they decide that France must be presumed to respect the law of nations and to decree the restitution. *The Betsey*, 1 Rob. 84-5; *Geyer v. Aguilar*, 7 T. R. 695; but when salvage is to be given to British recaptors of neutral property, then it appears that France has lost all regard for the law of nations, and there is no chance of escape from her courts of admiralty. *The Two Friends*, 1 Rob. 232; *The War Onskan*, 2 *ibid.* 246.

But it is contended, that the courts of France would have decided according to the decree of the 18th January, 1798, and not according to the law of nations. This is not to be presumed; but if it was, however tyrannical the conduct of a belligerent may be, no neutral can lawfully interfere, unless she herself is injured, or her property or rights are affected; and even then individuals can not act. The injury must be redressed by the government, in the way of negotiation or war. What was the conduct of our government in such a case? It first chose to negotiate, and then to prepare for war. At the time the negotiation was begun, all the injurious decrees were in force, full in the view of the legislature, who authorized certain measures of hostility: but no citizen could go one step beyond what was authorized. The liability of the *Amelia* to condemnation in a French court of admiralty, created no right in Captain Talbot to capture her, even if that condemnation was certain.

But the facts of this case do not warrant such a conclusion. The fact stated is, that "the ship *Amelia* sailed from Calcutta, in Bengal, in the month of April, 1799, loaded with a cargo of the product and manufacture of that country." What country? Bengal. But Bengal is not stated to be one of the possessions of England. Not long since, the province of Bengal was in possession of sovereign princes; but it does not appear how far they have been subdued by the English. It is true, that the libel speaks of Calcutta as being an English port in the East Indies, but it does not follow, that the whole country of Bengal has been subjected to the British power. Besides, it is not the port from whence the vessel sails which taints the cargo, but its quality, as being the production of an English possession. Hence, it does not appear, that the *Amelia* was liable to condemnation under the decree of the 18th January, 1798, and we can not presume that she

would have been condemned. The French captors did not pretend she was liable under that decree, but sent her in to be judged according to the laws of war; that is, according to the law of nations as applicable to a state of war; and there being no fact stated to the contrary, we are to suppose, that she would have been so judged, and not otherwise. To have interfered on our part to prevent this would have been a just cause of hostilities against us. No citizen ought to be allowed to come into our courts to claim a reward, for an act which hazards the peace of the country.

If benefit be the criterion of salvage, then the greater the service the greater ought to be the salvage. But if the construction given by the opposite counsel to the act of 2d March, 1799, be correct, then the same salvage is due for the recapture of a clear neutral, as of a belligerent. And yet, in common wars, no salvage at all is due for the recapture of a neutral.

Every neutral nation has a right to choose her own manner of redress. We have no right to interfere, or to decide how far her vessels are liable to condemnation under French decrees. She may be willing to trust to the chances of acquittal or indemnification. We have no right to legislate upon the property of a foreign independent nation, and to say, that we will, whether you consent or not, rescue your vessels from the French, and then make you pay us salvage. (Vatt., lib. 2, c. 1, § 7, p. 123.) If an act, intended solely for my benefit, is advantageous to another, I am not entitled to reward. (*The Vryheid*, 2 Rob. 23-4.) In order to ground a claim of salvage, the danger of the property must have been, not hypothetical, but absolute; not distant and uncertain, but immediate and imminent: the act of saving must have been done with that sole intent, and must have been attended with labor, loss, expense or hazard to the salvor. The *Amelia* was taken by Captain Talbot, and libelled as a French vessel; his object was not to save a neutral, but to capture a belligerent. Under such a mistake, he might have a right to examine her further, but the moment she proved to be neutral property, he ought to have released her. His mistake can be no ground for a claim of salvage: it is a mere justification of an act of force, and as such may save him from the payment of damages and costs. In this case, there was no danger to the property, no trouble in saving it, nor any intention to benefit the owners. In Beawes' *Lex Mer.*, vol. 1, p. 158, it is said,

that to support a claim of salvage, the vessel must be in evident hazard, and must be saved by means used with that sole view.

The owner was a citizen of an independent nation, and ought to have had his election. Where is the law or the authority that allows salvage to one belligerent taking from another the property of a neutral? By the state of the case, this vessel was neutral as to all the belligerent powers. If the captor had applied for her, she must have been given up, upon the authority of the case of *Glass v. Gibbs*, 3 Dall. 6, without any compensation for recapture. Among the cases cited, the only one against us is *The War Onskan*, 2 Rob. 246. In that case, Sir William Scott says, that "lately" it has been the practice of his court to give salvage on recapture of neutral property out of the hands of the French; but that such is not the modern practice of the law of nations; and upon this plain principle, that the liberation of a clear neutral from the hand of the enemy, is no essential service rendered to him; inasmuch as that same enemy would be compelled by the tribunals of his own country, after he had carried the neutral into port, to release him, with costs and damages for the injurious seizure and detention. But in that very case, however, we see that he might shortly change his course of decisions on that subject, so that, very probably, had that case been decided in the next term it would have been decided differently. No judge has a right to decide upon the departure of other nations from the law of nations, whatever evidence of such departure he may possess. There will be a variance in the decisions of the lower courts; it should, therefore, be put upon such a footing, as to make it clear and plain to all the judges of the inferior courts. This decision of Sir William Scott is a creature of his own, which he himself promises to change, when the situation of affairs will allow.

Sir William Scott gives salvage expressly on the ground of service rendered, on account of the kind of hostility which France exercised towards neutrals. But in this case, the statement of facts excludes the idea of hostility between France and Hamburg. The law of nations gave no right to recapture. The authority under the acts of Congress must be construed strictly, and confined to their express provisions. Neither the executive, nor individuals, nor the courts, have a right to alter them.

So far as war is not authorized by Congress, there is peace. It was

not contemplated by any act of Congress, that our vessels should capture Hamburg vessels. The mischief to be remedied by the act of May was, that the small armed vessels of France were hovering on our coasts, and taking our vessels almost in our ports. The act of Congress has completely met the evil, by authorizing the capture of such French vessels as had taken, or were found hovering, for the purpose of taking our vessels. This act, therefore, does not authorize the capture of a Hamburg vessel. There is no law which authorizes a capture for two purposes, viz., to be condemned as a French vessel, or to be subjected to salvage as a neutral. The *Amelia* was not navigating under the authority or pretended authority of France: she was engaged in a lawful trade. But if the French took possession of her, under suspicion of unlawful trade, that gave us no authority to take her from the possession of France, the property, under the law of nations, not being changed. The taking, being unlawful, can support no claim of salvage.

The act of July, 1798, authorizes only the capture of armed French vessels, and confines the cases of recapture to the ships or goods of citizens or residents of the United States. The capture can only be justified by the doubtful character of the vessel, and as soon as that was known to be neutral, Captain Talbot ought to have dismissed her; the detention afterwards was unlawful, and will not justify a decree for salvage. This vessel, it is true, might have been used to distress our commerce, and this might possibly be an excuse for detaining her, or even dismantling her, but will not entitle him to salvage.

If this vessel was lawful prize to France, then France has a claim for indemnity; but as she has made no claim, we must presume, the vessel would have been restored by her to the owners.

The act of Congress of March 2, 1799, upon which the counsel for the libellant rely, does not contemplate a case like the present. That is a permanent law, not made for the present war only, but intended to apply to all future wars. It could not, therefore, intend to give salvage, on the recapture of a neutral from a belligerent, which is not given by the law of nations, and which, it is allowed on all hands, is given, this war, for the first time, only on account of the conduct of France towards neutrals, and will cease, when that conduct shall be altered. Besides, it would give the same reward for taking the property of a neutral out of the hand of his friend, as out of the hand of his enemy. The word "enemy," in the 7th section of that act, means

the enemy of us and our ally, whose vessel is recaptured by our armed vessels, and not our enemy, who is the friend of our ally.

If, then, this is not a statutory case of salvage, we must recur to the question of benefit. In the court below they relied wholly on the act of Congress: not a word was said respecting the service rendered. Let us then consider the claim of *quantum meruit*. To support this, there must be, 1. A lawful consideration; and 2. A contract, express or implied.

To make the consideration lawful, it must be permitted by law; *a fortiori*, it must not be contrary to law. It is not authorized by our law, to take the property of a neutral out of the possession of his friend, and it is in direct opposition to policy, as it tends to commit the peace of the country. It is not alleged, that there was any express contract; and a contract can not be implied, because the intent with which she was taken, viz., to be condemned as a French armed vessel, excludes the idea. Nor can an implied contract be raised, on the retaining her, because that was a state of duress, which can not be made the ground of a reward.

But if this case is to be considered upon a *quantum meruit*, then the amount of salvage must depend upon the danger and the exertion. *The San Bernardo*, 1 Rob. 151; and *The Two Friends*, *ibid.* 240. It is said, that in cases of unauthorized capture or recapture, the property goes to the crown (*The Princessa*, 2 Rob. 45), and it is sometimes referred to the court to fix the reward of the captors. It follows, then, that the property goes to the government, and they alone can fix the reward; but our code gives no right to salvage in this case, nor does the state of hostilities between the two countries, as disclosed on the record, justify it. But if the decree and the notoriety of the misconduct of France, are to be admitted to prove a benefit conferred, who can say it was worth \$94,000, the half of the gross amount of sales of the ship and cargo? Neither the service rendered, the danger to the property, nor the exertion in saving it, can justify so enormous a reward. The decree of France might be only *in terrorem*, and so no danger. If the *Amelia* was not liable to condemnation in the French courts, then no service was rendered, and consequently, no salvage ought to be allowed.

But if she was liable to condemnation, then the recapture is a violation of the rights of France. If France violates the laws of nations, it is no justification of a violation of them on our part. An

illegal power to take, given by France to her cruisers, does not authorize us to retake. In the case of *Bas v. Tingy* (4 Dall. 37), the reasoning of the court seems to admit that the act of 2d March, 1799, will not apply, in the present state of hostilities, to recaptures of the vessels of nations in amity with the United States, unless the owners are residents of the United States; because there could be no lawful recapture of a neutral from the hand of a belligerent. Judge Moore, in delivering his opinion in that case, says, "It is, however, more particularly urged that the word 'enemy' can not be applied to the French; because the section in which it is used, is confined to such a state of war as would authorize a recapture of property belonging to a nation in amity with the United States, and such a state of war does not exist between America and France. A number of books have been cited, to furnish a glossary on the word enemy; yet, our situation is so extraordinary, that I doubt whether a parallel case can be traced in the history of nations. But if words are the representatives of ideas, let me ask, by what other word the idea of the relative situation of America and France could be communicated, than by that of hostility or war? And how can the characters of the parties engaged in hostility or war, be otherwise described than by the denomination of 'enemies.' It is for the honor and dignity of both nations, therefore, that they should be called enemies; for it is by that description alone, that either could justify or excuse the scene of bloodshed, depredation and confiscation, which has unhappily occurred; and surely, Congress could only employ the language of the act of June 13, 1798, towards a nation whom she considered as an enemy. Nor does it follow, that the act of March, 1799, is to have no operation, because all the cases in which it might operate, are not in existence at the time of passing it. During the present hostilities, it affects the case of recaptured property belonging to our own citizens, and in the event of a future war, it might also be applied to the case of recaptured property belonging to a nation in amity with the United States."

And in the same case, Judge Washington observed, "that hostilities may subsist between two nations, more confined in its nature and extent, being limited as to places, persons and things; and this is more properly termed imperfect war; because not solemn, and because those who are authorized to commit hostilities, act under special authority, and can go no further than to the extent of their commission." And again he says, "It has likewise been said, that the 7th

section of the act of March, 1799, embraces cases which, according to preexisting laws, could not then take place, because no authority had been given to recapture friendly vessels from the French, and this argument was strongly and forcibly pressed. But because every case provided for by this law was not then existing, it does not follow, that the law should not operate upon such as did exist, and upon the rest whenever they should arise. It is a permanent law, embracing a variety of subjects; not made in relation to the present war with France only, but in relation to any future war with her, or with any other nation. It might, then, very properly allow salvage for recapturing of American vessels from France, which had previously been authorized by law, though it could not immediately apply to the vessels of friends; and whenever such a war should exist between the United States and France, or any other nation, as, according to the law of nations, or special authority, would justify the recapture of friendly vessels, it might, on that event, with similar propriety, apply to them; which furnishes, I think, the true construction of the act. The opinion which I delivered at New York, in *Talbot v. Seeman*, was, that although an American vessel could not justify the taking of a neutral vessel from the French, because neither the sort of war that subsisted, nor the special commission under which the American acted, authorized the proceeding; yet that the 7th section of the act of 1799, applied to recaptures from France, as an enemy, in all cases authorized by Congress. And on both points, my opinion remains unshaken; or, rather, has been confirmed by the very able discussion which the subject has lately undergone in this court, on the appeal from my decree."¹

Similar sentiments were also expressed by Judge Chase and Judge Paterson, in the same case. From these opinions, it seems clearly to result, that the act of March 2, 1799, can not be the rule of salvage in this case.

On the part of the *libellant*, it was stated, in reply, as to the admissibility of the dispatches from the American envoys, and the French *arrêt* of 18th January, 1798, that courts of admiralty will always take notice of such laws of foreign countries as go to modify or change the law of nations, and are not bound by the same rules of evidence, as courts of common law. 1 Dall. 463; Lofft, 631; Doug.

¹This case of *Talbot v. Seeman* was argued once before, in this court, at Philadelphia. See 4 Dall. 34.

619, 622, 649, 650, 554. The opposite counsel have cited and relied on Robinson's Reports, to show what was the ancient law of France, and surely, we have as good a right to cite the same book, to show what is the present law of France. In *The Maria*, 1 Rob. 288, this *arrêt* of France is cited and argued upon by the judge.

The cases cited by the opposite counsel to show that foreign laws must be proved as facts, are all cases at common law, or relate to the mere municipal laws of a foreign country; and are not such as go to modify or explain the law of nations, as that country has adopted it. The case in *P. Williams* refers to a municipal law, which had no connection with the law of nations. The same observation applies to the cases from 6 Mod., and 2 Salk. No case can be produced, where a law of a foreign country, authenticated as this is by an act of the legislature of our country, has been refused to be considered by a court.

As to the objection, that the cargo does not appear to be the production of England, or her possessions, because there is no evidence that the whole of the province of Bengal has been subjected to the dominion of England; it may be sufficient to observe, that the libel and answer admit Calcutta to be an English port, and the case stated says, the vessel sailed from Calcutta, in Bengal, loaded with a cargo of the product and manufacture of that country. It being admitted, that Calcutta is an English port, and that the cargo was the production of that country, it follows, unless the contrary is clearly shown in evidence, that the cargo was the product of an English possession.

It is said, that there is no evidence that France carried her unjust decrees into execution, and that they might only be enacted *in terrorem*. But the fact is notorious to all the world: Congress have expressly declared it in the preambles of their acts: the whole system of hostility is founded upon it, and can be justified on no other ground. They have further declared it, by ordering the dispatches to be published and distributed among the citizens of the United States, for their information. It would be strange, if this court, sitting here as a court of the law of nations, to try a cause in which all the world are parties, should be the only persons in the world ignorant of the fact.

The general principle is admitted, that salvage is not due for the recapture of a neutral from a belligerent, and for this reason, that by the law of nations, the neutral would be restored by the captor, with damages and costs. But *cessante ratione, cessat lex*. And it follows,

by powerful inference, that if the captor would not have restored the neutral, with damages and costs, salvage ought to be allowed. To bring the *Amelia* within this inference, it is only necessary to show, that she would not have been restored with damages and costs. If the court should take into consideration the *arrêt* of the 18th of January, 1798, and the fact, that the cargo was the production of an English possession, there is no doubt but, instead of being restored with damages and costs, she would have been condemned and totally lost to her owners. Is no salvage due, for so certain and so signal a benefit?

It is said, that unless salvage is expressly given by the act of Congress, it can only be claimed upon a contract, either express or implied. This is not the case. The claim of salvage upon recapture never is supposed to arise *ex contractu*. It is given as a reward for the benefit received, and where there is no express statute upon the subject, the amount is to be regulated, not by the labor or hazard of the recaptor, nor by his intention to concur a benefit, but by the supposed amount which the owner would have been willing to give for the rescue of his property. Woodeson, 423. In *The Two Friends*, 1 Rob. 234-5, the rule of salvage on rescue is said to be *quantum meruit*. And in the same case, p. 232, Sir W. Scott says, "it has been slightly questioned in the act of court (which contains the exposition of facts given by both parties), whether there was such a state of hostilities between America and France as to raise a title of salvage for American goods retaken from the French. But this point has not been pursued in argument; and indeed, I should wonder if it had, after the determinations of this court, which have, in various instances, decreed salvage in similar cases. It is not for me to say, whether America is at war with France, or not; but the conduct of France towards America has been such *de facto*, as to induce American owners to acknowledge the services by which they have recovered their ships and cargoes out of the hands of French cruisers, by force of arms."

In the case of *Bas v. Tingy*, the question was not argued, whether salvage could be claimed upon the recapture of a neutral, on the ground of benefit rendered; and, therefore, the opinion of the court in that case does not militate with our claim.

August 11, 1801. MARSHALL, C. J., delivered the opinion of the court: This is a writ of error to a decree of the circuit court for the

district of New York, by which the decree of the district court of that State, restoring the ship *Amelia* to her owner on the payment of one-half for salvage, was reversed, and a decree rendered, directing the restoration of the vessel without salvage.

The facts agreed by the parties, and the pleadings in the cause, present the following case: The ship *Amelia* sailed from Calcutta, in Bengal, in April, 1799, loaded with a cargo of the product and manufacture of that country, and was bound to Hamburg. On the 6th September, she was captured by the French national corvette *La Diligente*, commanded by L. J. Dubois, who took out the master, part of the crew and most of the papers of the *Amelia*, and putting a prize-master and French sailors on board her, ordered her to St. Domingo, to be judged according to the laws of war. On the 15th of September, she was recaptured by Captain Talbot, commander of the *Constitution*, who ordered her into New York for adjudication. At the time of the recapture, the *Amelia* had eight iron cannon, and eight wooden guns, with which she left Calcutta. From the ship's papers, and other testimony, it appeared, that she was the property of Chapeau Rouge, a citizen and merchant of Hamburg; and it was conceded by the counsel below, that France and Hamburg were not in a state of hostility with each other, and that Hamburg was to be considered as neutral between the present belligerent powers.

The district court of New York, before whom the cause first came, decreed one-half of the gross amount of the ship and cargo as salvage to the recaptors. The circuit court of New York reversed this decree, from which reversal, the recaptors appealed to this court. The *Amelia* was libelled as a French vessel, and the libellant prays that she may be condemned as prize; or, if restored to any person entitled to her as the former owner, that such restoration should be made on paying salvage. The claim and answer of Hans Frederic Seeman discloses the neutral character of the vessel, and claims her on behalf of the owners.

The questions growing out of the facts, and to be decided by the court, are: Is Captain Talbot, the plaintiff in error, entitled to any, and if to any, to what salvage, in the case which has been stated?

Salvage is a compensation for actual service rendered to the property charged with it. It is demandable of right for vessels saved from pirates, or from the enemy. In order, however, to support the demand, two circumstances must concur. 1. The taking must be lawful. 2. There must be a meritorious service rendered to the recaptured.

1. The taking must be lawful; for no claim can be maintained in a court of justice, founded on an act in itself tortious. On a recapture, therefore, made by a neutral power, no claim for salvage can arise, because the act of retaking is a hostile act, not justified by the situation of the nation to which the vessel making the recapture belongs, in relation to that from the possession of which such recaptured vessel was taken. The degree of service rendered the rescued vessel is precisely the same as if it had been rendered by a belligerent; yet the rights accruing to the recaptor are not the same, because no right can accrue from an act in itself unlawful.

In order, then, to decide on the right of Captain Talbot, it becomes necessary to examine the relative situation of the United States and France at the date of the recapture. The whole powers of war being, by the Constitution of the United States, vested in Congress, the acts of that body can alone be resorted to as our guides in this inquiry. It is not denied, nor, in the course of the argument, has it been denied, that Congress may authorize general hostilities, in which case the general laws of war apply to our situation; or partial hostilities, in which case the laws of war, so far as they actually apply to our situation, must be noticed. To determine the real situation of America in regard to France, the acts of Congress are to be inspected.

The first act on this subject passed on the 28th of May, 1798, and is entitled "An act more effectually to protect the commerce and coasts of the United States." This act authorizes any armed vessel of the United States to capture any armed vessel sailing under the authority, or pretense of authority, of the Republic of France, which shall have committed depredations on vessels belonging to the citizens of the United States, or which shall be found hovering on the coasts, for the purpose of committing such depredations. It also authorizes the recapture of vessels belonging to the citizens of the United States.

On the 25th of June, 1798, an act was passed "to authorize the defense of the merchant vessels of the United States against French depredations." This act empowers merchant vessels, owned wholly by citizens of the United States, to defend themselves against any attack which may be made on them by the commander or crew of any armed vessel sailing under French colors, or acting, or pretending to act, by or under the authority of the French Republic; and to capture any such vessel. This act also authorizes the recapture of merchant vessels belonging to the citizens of the United States. By the 2d

section, such armed vessel is to be brought in and condemned for the use of the owners and captors. By the same section, recaptured vessels belonging to the citizens of the United States, are to be restored, they paying for salvage not less than one-eighth nor more than one-half of the true value of such vessel and cargo.

On the 28th of June, an act passed "in addition to the act more effectually to protect the commerce and coasts of the United States." This authorizes the condemnation of vessels brought in under the first act, with their cargoes, excepting only from such condemnation, the goods of any citizen or person resident within the United States, which shall have been before taken by the crew of such captured vessel. The second section provides that whenever any vessel or goods, the property of any citizen of the United States, or person resident therein, shall be recaptured, the same shall be restored, he paying for salvage one-eighth part of the value, free from all deductions.

On the 9th of July, another law was enacted, "further to protect the commerce of the United States." This act authorizes the public armed vessels of the United States to take any armed French vessel, found on the high seas. It also directs such armed vessel, with her apparel, guns, etc., and the goods and effects found on board, being French property, to be condemned as forfeited. The same power of capture is extended to private armed vessels. The sixth section provides, that the vessel or goods of any citizen of the United States, or person residing therein, shall be restored, on paying for salvage not less than one-eighth, nor more than one-half, of the value of such recapture, without any deduction.

The seventh section of the act for the government of the navy, passed the 2d of March, 1799, enacts, "That for the ships or goods belonging to the citizens of the United States, or to the citizens or subjects of any nation in amity with the United States, if retaken within twenty-four hours, the owners are to allow one-eighth part of the whole value for salvage," and if they have remained above ninety-six hours in possession of the enemy, one-half is to be allowed.

On the 3d of March, 1800, Congress passed "an act providing for salvage in cases of recapture." This law regulates the salvage to be paid "when any vessels or goods, which shall be taken as prize as aforesaid, shall appear to have before belonged to any person or persons permanently resident within the territory, and under the protection, of any foreign prince, government or state, in amity with the

United States, and to have been taken by an enemy of the United States, or by authority, or pretense of authority, from any prince, government or state, against which the United States have authorized, or shall authorize, defense or reprisals."

These are the laws of the United States which define their situation in regard to France, and which regulate salvage to accrue on recaptures made in consequence of that situation.

A neutral armed vessel which has been captured, and which is commanded and manned by Frenchmen, whether found cruising on the high seas, or sailing directly for a French port, does not come within the description of those which the law authorizes an American ship of war to capture, unless she be considered *quoad hoc* as a French vessel.

Very little doubt can be entertained, but that a vessel thus circumstanced, encountering an American unarmed merchantman, or one which should be armed, but of inferior force, would as readily capture such merchantman, as if she had sailed immediately from the ports of France. One direct and declared object of the war, then, which was the protection of the American commerce, would as certainly require the capture of such a vessel, as of others more determinately specified. But the rights of a neutral vessel, which the Government of the United States can not be considered as having disregarded, here intervene; and the vessel certainly is not, correctly speaking, a French vessel.

If the *Amelia* was not, on the 15th of September, 1799, a French vessel, within the description of the act of Congress, could her capture be lawful? It is, I believe, a universal principle, which applies to those engaged in a partial, as well as those engaged in a general war, that where there is probable cause to believe the vessel met with at sea, is in the condition of one liable to capture, it is lawful to take her, and subject her to the examination and adjudication of the courts. The *Amelia* was an armed vessel, commanded and manned by Frenchmen. It does not appear, that there was evidence on board to ascertain her character. It is not then to be questioned, but that there was probable cause to bring her in for adjudication. The recapture, then, was lawful.

But it has been insisted, that this recapture was only lawful in consequence of the doubtful character of the *Amelia*, and that no right of salvage can accrue from an act which was founded in mistake, and

which is only justified by the difficulty of avoiding error, arising from the doubtful circumstances of the case. The opinion of the court is, that had the character of the *Amelia* been completely ascertained by Captain Talbot, yet, as she was an armed vessel, under French authority, and in a condition to annoy the American commerce, it was his duty to render her incapable of mischief. To have taken out the arms, or the crew, was as little authorized by the construction of the act of Congress contended for by the claimants, as to have taken possession of the vessel herself.

It has, I believe, been practised in the course of the present war, and if not, is certainly very practicable, to man a prize and cruise with her for a considerable time, without sending her in for condemnation. The property of such vessel would not, strictly speaking, be changed, so as to become a French vessel, and yet it would probably have been a great departure from the real intent of Congress, to have permitted such vessel to cruise unmolested. An armed ship, under these circumstances, might have attacked one of the public vessels of the United States. The acts which have been recited expressly authorize the capture of such vessel, so commencing hostilities, by a private armed ship, but not by one belonging to the public. To suppose, that a capture would in one case be lawful, and in the other unlawful; or to suppose, that even in the limited state of hostilities in which we were placed two vessels armed and manned by the enemy, and equally cruising on American commerce, might the one be lawfully captured, while the other, though an actual assailant, could not; or if captured, that the act could only be justified from the probable cause of capture furnished by appearances, would be to attribute a capriciousness to our legislation on the subject of war, which can only be proper when inevitable.

There must, then, be incidents growing out of those acts of hostility specifically authorized, which a fair construction of the acts will authorize likewise. This was obviously the sense of Congress. If by the laws of Congress on this subject, that body shall appear to have legislated upon a perfect conviction that the state of war in which this country was placed, was such as to authorize recaptures, generally, from the enemy; if one part of the system shall be manifestly founded on this construction of the other part, it would have considerable weight in rendering certain, what might before have been doubtful.

Upon a critical investigation of the acts of Congress, it will appear,

that the right of recapture is expressly given, in no single instance, but that of a vessel or goods belonging to a citizen of the United States. It will also appear, that the *quantum* of salvage is regulated, as if the right to it existed previous to the regulation.

Although no right of recapture is given, in terms, for the vessels and goods belonging to persons residing within the United States, not being citizens, yet an act, passed so early as the 28th of June, 1798, declares, that vessels and goods of this description, when recaptured, shall be restored on paying salvage; thereby plainly indicating, that such recapture was sufficiently warranted by law, to be the foundation of a claim for salvage. If the recapture of vessels of one description, not expressly authorized by the very terms of the act of Congress, be yet a rightful act, recognized by Congress as the foundation for a claim to salvage, which claim Congress proceeds to regulate, then it would seem, that other recaptures from the same enemy are equally rightful; and where the claim they afford for salvage has not been regulated by Congress, such claim must be determined by the principles of general law.

In this situation remained the recaptured vessels of any other power, also at war with France, until the act of the 2d of March, 1799, which regulates the salvage demandable from them. Neither by that act, nor by any previous act, was a power given, in terms, to recapture such vessels. But their recapture was an incident which unavoidably grew out of the state of the war. On the capture of a French vessel, having with her as a prize the vessel of such a power, the prize was inevitably recaptured. On the idea, that the recapture was lawful, and that it was a foundation on which the right to salvage could stand, the legislature, in March, 1799, declared what the amount of that salvage should be. The expression of this act is by no means explicit. If it extends to neutrals, then it governs in this case; if otherwise, the law respecting them continued still longer, on the same ground with the law respecting a belligerent, prior to the passage of the act of the 2d of March, 1799. Thus it continued until the 3d of March, 1800, when the legislature regulated the salvage to be paid by neutrals, recaptured from a power against which the United States have authorized defense or reprisals.

This act having passed subsequently to the recapture of the *Amelia*, can certainly not affect that case as to the quantity of salvage, or give a right to salvage which did not exist before. But it manifests, in like

condemnation all neutrals captured by its cruisers, and who will say, that no benefit is conferred by a recapture? In such a course of things, the state of the neutral is completely changed. So far from being safe, he is in as much danger of condemnation, as if captured by his own declared enemy. A series of decisions, then, and of rules founded on his supposed safety, no longer apply: only those rules are applicable, which regulate a situation of actual danger. This is not, as it has been termed, a change of principle; but a preservation of principle, by a practical application of it, according to the original substantial good sense of the rule.

It becomes, then, necessary to inquire, whether the laws of France were such as to have rendered the condemnation of the *Amelia* so extremely probable, as to create a case of such real danger, that her recapture by Captain Talbot must be considered as a meritorious service entitling him to salvage. To prove this, the counsel for the plaintiff in error has offered several decrees of the French Government, and especially, one of the 18th of January, 1798.

Objections have been made to the reading of these decrees, as being the laws of a foreign nation, and therefore, facts, which, like other facts, ought to have been proved, and to have formed a part of the case stated for the consideration of the court. That the laws of a foreign nation, designed only for the direction of its own affairs, are not to be noticed by the courts of other countries, unless proved as facts, and that this court, with respect to facts, is limited to the statement made in the court below, can not be questioned. The real and only question is, whether the public laws of a foreign nation, on a subject of common concern to all nations, promulgated by the governing powers of a country, can be noticed as law, by a court of admiralty of that country, or must be still further proved as a fact.

The negative of this proposition has not been maintained in any of the authorities which have been adduced. On the contrary, several have been quoted (and such seems to have been the general practice) in which the marine ordinances of a foreign nation are read as law, without being proved as facts. It has been said, that this is done by consent: that it is a matter of general convenience, not to put parties to the trouble and expense of proving permanent and well-known laws which it is in their power to prove; and this opinion is countenanced by the case cited from Douglas. If it be correct, yet, this decree having been promulgated in the United States as the law of France,

by the joint act of that department which is entrusted with foreign intercourse, and of that which is invested with the powers of war, seems to assume a character of notoriety which renders it admissible in our courts. It is, therefore, the opinion of the court, that the decree should be read as an authenticated copy of a public law of France, interesting to all nations.

The decree ordains, that "the character of vessels, relative to their quality of neuter or enemy, shall be determined by their cargo; in consequence, every vessel found at sea, loaded, in whole or in part, with merchandise, the production of England or her possessions, shall be declared good prize, whoever the owner of these goods or merchandise may be." This decree subjects to condemnation in the courts of France, a neutral vessel, laden, in whole or in part, with articles the growth of England or any of its possessions. A neutral thus circumstanced can not be considered as in a state of safety: his recaptor can not be said to have rendered him no service. It can not reasonably be contended, that he would have been discharged in the ports of the belligerent, with costs and damages.

Let us, then, inquire, whether this was the situation of the *Amelia*. The first fact states her to have sailed from Calcutta, in Bengal, in April, 1799, laden with a cargo of the product and manufacture of that country. Here it is contended, that the whole of Bengal may possibly not be in the possession of the English, and, therefore, it does not appear that the cargo was within the description of the decree. But to this, it has been answered, that in inquiring whether the *Amelia* was in danger or not, this court must put itself in the place of a French court of admiralty, and determine as such court would have determined. Doing this, there seems to be no reason to doubt, that the cargo, without inquiring into the precise situation of the British power in every part of Bengal, being *prima facie* of the product and manufacture of a possession of England, would have been so considered, unless the contrary could have been plainly shown.

The next fact relied on by the defendant in error is, that the *Amelia* was sent to be adjudged according to the laws of war, and from thence it is inferred, that she could not have been judged according to the decree of the 18th of January. It is to be remembered, that these are the orders of the captor, and without a question, in the language of a French cruiser, a law of his own country furnishing a rule of conduct in time of war, will be spoken of as one of the laws of war.

But the third and fourth facts in the statement admit the *Amelia*, with her cargo, to have belonged to a citizen of Hamburg, which city was not in a state of hostility with the Republic of France, but was to be considered as neutral between the then belligerent powers. It has been contended, that these facts not only do not show the recaptured vessel to have been one on which the decree could operate, but positively show that the decree could not have affected her. The whole statement, taken together, amounts to nothing more than that Hamburg was a neutral city; and it is precisely against neutrals, that the decree is in terms directed. To prove, therefore, that the *Amelia* was a neutral vessel, is to prove her within the very words of the decree, and consequently, to establish the reality of her danger.

Among the very elaborate arguments which have been used in this case, there are some which the court deem it proper more particularly to notice. It has been contended, that this decree might have been merely *in terrorem*; that it might never have been executed; and that, being in opposition to the law of nations, the court ought to presume it never would have been executed. But the court can not presume the laws of any country to have been enacted *in terrorem*; nor that they will be disregarded by its judicial authority. Their obligation on their own courts must be considered as complete; and without resorting either to public notoriety, or the declarations of our own laws on the subject, the decisions of the French courts must be admitted to have conformed to the rules prescribed by their government.

It has been contended, that France is an independent nation, entitled to the benefits of the law of nations; and further, that if she has violated them, we ought not to violate them also, but ought to remonstrate against such misconduct. These positions have never been controverted; but they lead to a very different result from that which they have been relied on as producing.

The respect due to France is totally unconnected with the danger in which her laws had placed the *Amelia*; nor is France in any manner to be affected by the decree this court may pronounce. Her interest in the vessel was terminated by the recapture, which was authorized by the state of hostility then subsisting between the two nations. From that time, it has been a question only between the *Amelia* and the recaptor, with which France has nothing to do.

It is true, that a violation of the law of nations by one power does

not justify its violation by another; but that remonstrance is the proper course to be pursued, and this is the course which has been pursued. America did remonstrate, most earnestly remonstrate, to France, against the injuries committed on her; but remonstrance having failed, she appealed to a higher tribunal, and authorized limited hostilities: this was not violating the law of nations, but conforming to it. In the course of these limited hostilities, the *Amelia* has been recaptured, and the inquiry now is, not whether the conduct of France would justify a departure from the law of nations, but what is the real law in the case? This depends on the danger from which she has been saved.

Much has been said about the general conduct of France and England on the seas, and it has been urged, that the course of the latter has been still more injurious than that of the former. That is a consideration not to be taken up in this cause: animadversions on either, in the present case, would be considered as extremely unbecoming the judges of this court, who have only to inquire what was the real danger in which the laws of one of the countries placed the *Amelia*, and from which she has been freed by her recapture.

It has been contended, that an illegal commission to take, given by France, can not authorize our vessels to retake; that we have no right by legislation to grant salvage out of the property of a citizen of Hamburg, who might have objected to the condition of the service. But it is not the authority given by the French Government to capture neutrals, which is legalizing the recapture made by Captain Talbot; it is the state of hostility between the two nations which is considered as having authorized that act. The recapture having been made lawfully, then the right to salvage, on general principles, depends on the service rendered. We can not presume this service to have been unacceptable to the Hamburger, because it has bettered his condition; but a recapture must always be made without consulting the recaptured. The act is one of the incidents of war, and is, in itself, only offensive as against the enemy. The subsequent fate of the recaptured depends on the service he has received, and on other circumstances.

To give a right to salvage, it is said, there must be a contract, either express or implied. Had Hamburg been in a state of declared war with France, recaptured vessels of that city would be admitted to be liable to pay salvage. If a contract be necessary, from what circumstances would the law, in that state of things, imply it? Clearly,

from the benefit received, and the risk incurred. If, in the actual state of things, there was also benefit and risk, then the same circumstances concur, and they warrant the same result.

It is also urged, that to maintain this right, the danger ought not to be merely speculative, but must be imminent and the loss certain. That a mere speculative danger will not be sufficient to entitle a person to salvage, is unquestionably true. But that the danger must be such, that escape from it by other means was inevitable, can not be admitted. In all the cases stated by the counsel for the defendant in error, safety by other means was possible, though not probable. The flames of a ship on fire might be extinguished by the crew, or by a sudden tempest. A ship on the rocks might possibly be gotten off, by the aid of wind and tides, without assistance from others. A vessel captured by an enemy might be separated from her captor, and if sailors had been placed on board the prize, a thousand accidents might possibly destroy them; or they might even be blown by a storm into a port of the country to which the prize vessel originally belonged. It can not, therefore, be necessary that the loss should be inevitably certain; but it is necessary that the danger should be real and imminent. It is believed to have been so, in this case. The captured vessel was of such description that the law by which she was to be tried, condemned her as good prize to the captor. Her danger, then, was real and imminent. The service rendered her was an essential service, and the court is, therefore, of opinion, that the recaptor is entitled to salvage.

3. The next object of inquiry is, what salvage ought to be allowed? The captors claim one-half the gross value of the ship and cargo. To support this claim they rely on the "act for the government of the navy of the United States," passed the 2d of March, 1799. This act regulates the salvage payable on the ships and goods belonging to the citizens of the United States, or to the citizens or subjects of any nation in amity with the United States, retaken from the enemy. It has been contended, that the case before the court is in the very words of the act. That the owner of the *Amelia* is a citizen of a state in amity with the United States, retaken from the enemy. That the description would have been more limited, had the intention of the act been to restrain its application to a recaptured vessel belonging to a nation engaged with the United States against the same enemy. The words of the act would certainly admit of this construction.

Against it, it has been urged, and we think with great force, that the laws of the United States ought not, if it be avoidable, so to be construed as to infract the common principles and usages of nations, or the general doctrines of national law. If the construction contended for be given to the act, it subjects to the same rate of salvage a recaptured neutral, and a recaptured belligerent vessel. Yet, according to the law of nations, a neutral is generally to be restored without salvage.

This argument, in the opinion of the court, derives great additional weight from the consideration that the act in question is not temporary, but permanent. It is not merely fitted to the then existing state of things, and calculated to expire with them, but is a regulation applying to present and future times. Whenever the danger resulting to captured neutrals from the laws of France should cease, then, according to the principles laid down in this decree, the liability of recaptured neutrals to the payment of salvage would, in conformity with the general law and usage of nations, cease also. This event might have happened, and probably did happen, before hostilities between the United States and France were terminated by treaty. Yet, if this law applies to the case, salvage from a recaptured neutral would still be demandable. This act, then, if the words admit it, since it provides a permanent rule for the payment of salvage, ought to be construed to apply only to cases in which salvage is permanently payable.

On inspecting the clause in question, the court is struck with the description of those from whom the vessel is to be retaken, in order to come within the provisions of the act. The expression used is, the enemy: a vessel retaken from the enemy. The enemy of whom? The court thinks it not unreasonable to answer, of both parties. By this construction, the act of Congress will never violate those principles which we believe, and which it is our duty to believe, the legislature of the United States will always hold sacred.

If this act does not comprehend the case, then the court is to decide, on a just estimate of the danger from which the recaptured was saved, and of the risk attending the retaking of the vessel, what is a reasonable salvage. Considering the circumstances, and considering also what rule has been adopted in other courts of admiralty, one-sixth appears to be a reasonable allowance.

It is, therefore, the opinion of the court, that the decree of the

circuit court, held for the district of New York, was correct, in reversing the decree of the district court, but not correct in decreeing the restoration of the *Amelia*, without paying salvage. This court, therefore, is of opinion, that the decree, so far as the restoration of the *Amelia*, without salvage, is ordered, ought to be reversed, and that the *Amelia* and her cargo ought to be restored to the claimant, on paying for salvage one-sixth part of the net value, after deducting therefrom the charges which have been incurred.

THE UNITED STATES v. THE SCHOONER *PEGGY*¹

Definitive decrec.—Judicial notice.—High seas

A final condemnation in an inferior court of admiralty, where a right of appeal exists, and has been claimed, is not a definitive condemnation, within the meaning of the 4th article of the convention with France, signed September 30, 1800.

The court is as much bound, as the executive, to take notice of a treaty, and will reverse the original decree of condemnation (although it was correct when made), and decree restoration of the property, under the treaty made since the original condemnation.

Quære? As to the extent of the term high seas?

Error to the Circuit Court for the District of Connecticut, on a question of prize. The facts found and stated by Judge Law, the district judge, were as follows:

That the ship *Trumbull*, duly commissioned by the President of the United States, with instructions to take any armed French vessel or vessels, sailing under authority, or pretense of authority, from the French Republic, which shall be found within the jurisdictional limits of the United States, or elsewhere on the high seas, etc., as set forth in said instructions; and said ship did, on the 24th day of April last (April, 1800), capture the schooner *Peggy*, after running her ashore, a few miles to the westward of Port au Prince, within the dominions and territory of General Toussaint, and has brought her into port, as set forth in the libel; and it further appears, that all the facts contained in the claim are true;² whereupon, this court are of opinion that as it

¹ Cranch, 103.

² The material facts stated in the claim are, that the schooner was the property of citizens of the French Republic; that she was permitted by Toussaint to receive on board the cargo, which was on board at the time of capture; that

appears that the said schooner was solely upon a trading voyage, and sailed under the permission of Toussaint, with dispatches for the French Government, under a convoy furnished by Toussaint, with directions to touch at Leogane for supplies, and that the arms she had on board must be presumed to be only for self-defense; neither does it appear she had ever made, or attempted to make, any depredations, and that she was not such an armed vessel as was meant and intended by the laws of the United States should be subject to capture and condemnation; and that the situation she was in, at the time of capture, being aground within the territory and jurisdiction of Toussaint, she was not on the high seas, so as to be intended to be within the instructions given to the commanders of American ships of war: therefore, adjudge said schooner is not a lawful prize, and decree that said schooner with her cargo be restored to the claimant.

From this decree, the attorney for the United States, in behalf of the United States and the commander, officers and crew of the *Trumbull*, appealed to the circuit court, in which Judge Cushing sat alone, as the district judge declined sitting in the cause, on account of the interest of his son, who was one of the officers on board the *Trumbull*, at the time of capture, and who, if the schooner should be condemned, would be entitled to a share of the prize-money. The circuit court, on the appeal, found the following facts, and gave the following opinion and decree:

That David Jewett, commander of the said public armed vessel, called the *Trumbull*, being duly commissioned, and instructed by the President of the United States, as set forth in the said libel, did, on or about the 23d of April last, capture the said schooner *Peggy*, after running her aground, about pistol-shot from the shore, a few miles to the westward of Port au Prince, called also Port Republican, on the coast of the island of St. Domingo, and

she had dispatches from Toussaint to France; that she sailed by his authority, on the 23d of April, for France, navigated by ten men, including Buisson, the claimant, and Gillibert, the commander, and having on board four small three-pound carriage-guns, solely for defense against piratical assaults, and being under convoy of a tender, furnished by Toussaint. That on the 23d of April, she was run ashore, a few miles to the westward of Port au Prince, within the dominion, jurisdiction and territory of General Toussaint, so that she was fast and tight aground; at which time, and in which situation, the boats and crew of the *Trumbull* attacked and took possession of her, and got her off. That Toussaint then was, and still is, on terms of amity, commerce and friendship with the United States, duly entered into and ratified by treaty. That the schooner was on a lawful voyage, for the sole purpose of trade; and not commissioned, or in a condition to annoy or injure the trade or commerce of the United States.

afterwards bring her into port, as set forth in the libel. That at the time of the capture of the said schooner, there were ten persons aboard her. That she was then armed with four carriage-guns, being four-pounders, with four swivel-guns, six muskets, four pistols, four cutlasses, two axes, some boarding-hatchets, tomahawks and handcuffs. That she was a trading French vessel of about a hundred tons, then laden with coffee, sugar and other merchandise. That she had come from Bordeaux to Port au Prince, where the claimant had taken in said cargo, and from whence he sailed, on or about the said 23d day of April, with said schooner and cargo, having dispatches from General Toussaint for the French Government. That the said Buisson sailed from Port au Prince as aforesaid, with the permission and direction of General Toussaint, to proceed to Bordeaux; that said schooner so sailed from Port au Prince, under convoy of an armed vessel, by order of said Toussaint, without a passport from Mr. Stevens, consul-general of the United States at St. Domingo, but that Buisson had been promised by Toussaint's brother, that one should be obtained and sent him, which, however, was not done; that said schooner had sailed from Bordeaux for Port au Prince, with fifteen men, besides eight passengers (according to the roll of equipage), armed with some guns, swivels and muskets; that said Captain Buisson was without any commission as for a vessel of war, and alleges that he was armed only for self-defense. That at the time of said capture, the guns of said schooner were loaded with canister-shot, one of which being fired, the shot fell near the bow of the *Trumbull*; but the said Buisson declares that said gun was fired only as a signal to his convoy. That the said Captain Buisson appeared to be in a disposition, and was prepared with force, to resist the boats which were sent from the *Trumbull* to board him, a little previous to the capture, in case of their attempting it; and that the said schooner and cargo are French property.

Upon these facts, the court is of opinion as follows, viz.: However compassion may be moved in favor of the claimant by some circumstances; such as that he was charged with dispatches from General Toussaint, between whom and the United States there were some friendly arrangements respecting commerce; that he was not in a capacity of greatly annoying trade, from the fewness of his men; and his allegation that he was armed only in defense; yet as the court is bound by law, which makes no such distinctions; as armed French vessels are not protected by any treaty or convention; particularly, not by the regulations between General Toussaint and the American consul; and as the said schooner *Peggy* was in a condition capable of annoying, and even of capturing single unarmed trading vessels, unattended with convoy; the court can not avoid being of opinion, that she falls within the

description and general design of the expression of the law, an armed French vessel.

2d. That she was captured on the high seas: the argument taken by the claimant's counsel, from the extent of national jurisdiction on seacoasts bordering on the country, not applying to this case, so as to acquit the said schooner; the seacoast of St. Domingo not being neutral; not made so by any treaty or convention; but to be considered as hostile, upon our present plan of laws of defense with respect to France; as much so as any part of the coast of France, as far as regards French armed vessels; the court is, therefore, of opinion that the said schooner *Peggy* and cargo are lawful prize:

It is, therefore, considered, decreed and adjudged by this court, that the decree of the district court respecting the same, so far as regards their acquittal, be, and the same is hereby reversed; and that the said schooner, with her apparel, guns and appurtenances, and the goods and effects which were found on board of her at the time of capture, and brought into port as aforesaid, be, and the same are hereby condemned as forfeited to the use of the United States, and of the officers and men of the said armed vessel called the *Trumbull*, one-half thereof to the United States, the other half to the officers and men, to be divided according to law; the said schooner *Peggy* being of inferior force to the said armed vessel called the *Trumbull*.

This sentence and decree were pronounced on the 23d day of September, 1800.

During the present term, and before the court gave judgment upon this writ of error, viz., on the 21st of December, 1801, the convention with France was finally ratified by the President; the fourth article of which convention has these words: "Property captured, and not yet *definitively* condemned, or which may be captured before the exchange of ratifications (contraband goods destined to an enemy's port excepted), shall be mutually restored." "This article shall take effect from the date of the signature of the present convention. And if, from the date of the said signature, any property shall be condemned, contrary to the intent of the said convention, before the knowledge of this stipulation shall be obtained, the property so condemned shall, without delay, be restored or paid for."

On the 30th of September, 1800, this convention was signed by the respective plenipotentiaries of the two nations, at Paris. On the 18th of February, 1801, it was ratified by the President of the United States, with the advice and consent of the Senate, excepting the 2d

article, and with a limitation of the duration of the convention to the term of eight years. On the 31st of July, 1801, the ratifications were exchanged at Paris, with a proviso that the expunging of the 2d article should be considered as a renunciation of the respective pretensions which were the object of that article.

This proviso being considered by the President as requiring a renewal of the assent of the Senate, he sent it to them for their advice. They returned it, with a resolve that they considered the convention as fully ratified. Whereupon, on the 21st of December, 1801, it was promulgated by a proclamation of the President.

The controversy turned principally upon two points: 1st. Whether the capture could be considered as made on the high seas, according to the import of that term, as used in the Act of Congress of July 9th, 1798 (1 U. S. Stat. 578). 2d. Whether, by the sentence of condemnation, by the circuit court, on the 23d of September, 1800, the schooner *Peggy* could be considered as *definitively* condemned, within the meaning of the 4th article of the convention with France, signed at Paris, on the 30th of September, 1800. The writ of error was dated on the 2d of October, 1800.

Griswold and *Bayard*, for the captors.

Mason, for the claimant.¹

The Chief Justice delivered the opinion of the court.—In this case, the court is of opinion that the schooner *Peggy* is within the provisions of the treaty entered into with France, and ought to be restored. This vessel is not considered as being *definitively* condemned. The argument at the bar which contends that because the sentence of the circuit court is denominated a final sentence, therefore, its condemnation is definitive, in the sense in which that term is used in the treaty, is not deemed a correct argument. A decree or sentence may be interlocutory or final, in the court which pronounces it, and receives its appellation from its determining the power of that particular court over the subject to which it applies, or being only an intermediate order, subject to the future control of the same court. The last decree of an inferior court is final, in relation to the power of that court, but not in relation to the property itself, unless it be acquiesced under. The terms used in the treaty seem to apply to the actual con-

¹I regret that not having the notes of this case, I am unable to report the very ingenious arguments of the learned counsel.

dition of the property, and to direct a restoration of that which is still in controversy between the parties. On any other construction, the word *definitive* would be rendered useless and inoperative. Vessels are seldom, if ever, condemned, but by a final sentence: an interlocutory order for a sale is not a condemnation. A stipulation, then, for the restoration of vessels, not yet condemned, would, on this construction, comprehend as many cases as a stipulation for the restoration of such as are not yet definitively condemned. Every condemnation is final as to the court which pronounces it, and no other difference is perceived between a condemnation and a final condemnation, than that the one terminates definitively the controversy between the parties, and the other leaves that controversy still depending. In this case, the sentence of condemnation was appealed from; it might have been reversed, and therefore, was not such a sentence as, in the contemplation of the contracting parties, on a fair and honest construction of the contract, was designated as a definitive condemnation.

It has been urged, that the court can take no notice of the stipulation for the restoration of property not yet definitely condemned; that the judges can only inquire whether the sentence was erroneous, when delivered, and that if the judgment was correct, it can not be made otherwise, by anything subsequent to its rendition. The Constitution of the United States declares a treaty to be the supreme law of the land. Of consequence, its obligation on the courts of the United States must be admitted. It is certainly true, that the execution of a contract between nations is to be demanded from, and in the general, superintended by, the executive of each nation; and therefore, whatever the decision of this court may be, relative to the rights of parties litigating before it, the claim upon the nation, if unsatisfied, may still be asserted. But yet, where a treaty is the law of the land, and as such affects the rights of parties litigating in court, that treaty as much binds those rights, and is as much to be regarded by the court, as an act of Congress; and although restoration may be an executive, when viewed as a substantive act, independent of, and unconnected with, other circumstances, yet to condemn a vessel, the restoration of which is directed by a law of the land, would be a direct infraction of that law, and of consequence, improper.

It is, in the general, true, that the province of an appellate court is only to inquire whether a judgment, when rendered, was erroneous or not. But if, subsequent to the judgment, and before the decision

of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. If the law be constitutional, and of that no doubt, in the present case, has been expressed, I know of no court which can contest its obligation. It is true that in mere private cases between individuals, a court will and ought to struggle hard against a construction which will, by a retrospective operation, affect the rights of parties, but in great national concerns, where individual rights, acquired by war, are sacrificed for national purposes, the contract making the sacrifice ought always to receive a construction conforming to its manifest import; and if the nation has given up the vested rights of its citizens, it is not for the court, but for the government, to consider whether it be a case proper for compensation. In such a case, the court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which can not be affirmed, but in violation of law, the judgment must be set aside.

ALEXANDER MURRAY, ESQ., v. SCHOONER *CHARMING BETSY*¹

Marine trespass.—Probable cause.—Damages.—Expatriation.—Armed vessel

An American vessel, sold in a Danish island, to a person who was born in the United States, but who had *bona fide* become a burgher of that island, and sailing from thence to a French island, in June, 1800, with a new cargo purchased by her new owner, and under the Danish flag, was not liable to seizure, under the non-intercourse law of February 27, 1800.

If there was no reasonable ground of suspicion that she was a vessel trading contrary to that law, the commander of a United States ship of war, who seizes and sends her in, is liable for damages.

The report of assessors appointed by the court of admiralty to assess the damages, ought to state the principles on which it is founded, and not a gross sum, without explanation.

An American citizen, residing in a foreign country, may acquire the commercial privileges attached to his domicile; and by making himself the subject of a foreign power, he places himself out of the protection of the United States, while within the territory of the sovereign to whom he has sworn allegiance.

¹U. S. Supr. Court, 1804, 2 Cranch, 64.

Quære? Whether a citizen of the United States can divest himself absolutely of that character otherwise than in such manner as may be prescribed by law?

Whether, by becoming the subject of a foreign power, he is freed from punishment for a crime against the United States?

What degree of arming constitutes an armed vessel?

The facts of this case are thus stated by the District Judge in his decree.

The libel in this cause is founded on the act entitled "an act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof" (27th February, 1800, 2 U. S. Stat. 7); and states that the schooner (*The Charming Betsy*) sailed from Baltimore, after the passing of that act, owned, hired or employed by persons resident within the United States, or by citizens thereof, resident elsewhere, bound to Guadeloupe, and was taken on the high seas, on the 1st of June, 1800, by the libellant, then commander of the public armed ship the *Constellation*, in pursuance of instructions given to the libellant, by the President of the United States, there being reason to suspect her to be engaged in a traffic or commerce contrary to the said act, etc. The claim and answer, replication and rejoinder, are referred to for a further statement of the proceedings in this case, on all which I ground my decree. On a careful attention to the exhibits and testimony in this cause, and after hearing of counsel, I am of opinion that the following facts are either acknowledged in the proceedings, or satisfactorily proved.

That on or about the 10th of April, 1800, the schooner, now called *The Charming Betsy*, but then called the *Jane*, sailed from Baltimore, in the district of Maryland, an American bottom, duly registered according to law, belonging to citizens of, and resident in, the United States, and regularly documented with American papers; that she was laden with a cargo belonging to citizens of the United States; that her destination was first to St. Bartholomew, where the master had orders to effect a sale of both vessel and cargo; but if a sale of the schooner could not be effected at St. Bartholomew, which was to be considered the "primary object" of the voyage, the master was to proceed to St. Thomas, with the vessel and such part of the flour as should be unsold, where he was to accomplish the sale. That although a sale of the cargo, consisting chiefly of flour, was effected at St. Bartholomew, yet the vessel could not there be advantageously disposed of, and the master proceeded, according to his instructions, to St. Thomas, where a *bona fide* sale was accomplished, by Captain James Phillips, on behalf of the American owners, for a valuable considera-

tion, to a certain Jared Shattuck, a resident merchant in the island of St. Thomas.

That although it is granted that Jared Shattuck was born in Connecticut, before the American revolution, yet he had removed, long before any differences with France in his early youth, to the island of St. Thomas, where he served his apprenticeship, intermarried, opened a house of trade, owned sundry vessels, and, as it is said, lands; which none but Danish subjects were competent to hold and possess. About the year 1796, he became a Danish burgher, invested with the privileges of a Danish subject, and owing allegiance to his Danish majesty. The evidence on this head is sufficient to satisfy me of these facts; though some of them might be more fully proved. It does not appear, that Jared Shattuck ever returned to the United States to resume citizenship, but constantly resided, and had his domicile, both before and at the time of the purchase of the schooner *Jane*, at St. Thomas. That although the schooner was armed and furnished with ammunition, on her sailing from Baltimore, and the cannon, arms and stores were sold to Jared Shattuck by a contract separate from that of the vessel, she was chiefly dismantled of these articles at St. Thomas, a small part of the ammunition, and a trifling part of the small arms excepted. That the name of the said schooner was at St. Thomas changed to that of *The Charming Betsy*, and she was documented with Danish papers, as the property of Jared Shattuck. That so being the *bona fide* property of Jared Shattuck, she took in a cargo belonging to him, and no other, as appears by the papers found on board, and delivered to this court.

That she sailed, with the said cargo, from St. Thomas, on or about the 25th day of June, 1800, commanded by a certain Thomas Wright, a Danish burgher, and navigated according to the laws of Denmark, for aught that appears to the contrary, bound to the island of Guadeloupe.

That on or about the first of July last, 1800, she was captured, on her passage to Guadeloupe, by a French privateer, and a prize-master and seven or eight hands put on board; the Danish crew (except Captain Wright, an old man and two boys) being taken off by the French privateer. That on the 3d of the same July, she was boarded and taken possession of by some of the officers and crew of the *Constellation*, under the orders of Captain Murray, and sent into the port of St. Pierre, in Martinique, where she arrived on the 5th of the same month of July. I do not state the contents of a paper called a *procès verbal*, which, however, will appear among the exhibits, because, in my opinion, it contains statements, either contrary to the real facts, or illusory, and calculated to serve the purposes of the French captors. Nor do I detail the number of cutlasses, a musket and a small quantity of ammunition found on board, when the schooner was boarded by

Captain Murray's orders. The Danish papers were on board, and, except the *procès verbal*, formed by the French captors, no other ship's papers. The instructions of Captain Murray from the President of the United States comprehend the case of a vessel found in the possession of French captors, but then it should seem, that it must be a vessel belonging to citizens of the United States. It does not appear that Captain Murray had any knowledge of Jared Shattuck being a native of Connecticut, or of any of the United States, until he was informed by Captain Wright, at Martinique.

It is unnecessary to go into any disquisition about the instructions to the commanders of public armed ships, whether they were directory to Captain Murray in the case in question; and if so, whether they were, or not, strictly conformable to law, does not finally justify an act which, on investigation, turns out to be illegal, either as it respects the municipal laws of our country or the laws of nations. Captain Murray's respectable character, both as an officer and a citizen forbids any idea of his intention to do a wanton act of violence towards either a citizen of the United States, or a subject of another nation. He, no doubt, thought it his duty to send the vessel in question to the United States for adjudication. He had also reasons prevailing with him, to sell Jared Shattuck's cargo in Martinique. His sending the schooner to Martinique was evidently proper, and serviceable to the owner, as she had not a sufficient number of the crew on board to navigate her. But the further proceeding turns out, in my opinion, wrong. Whatever probable cause might appear to Captain Murray to justify his conduct, or excite suspicion at the time, he ran the risk of, and is amenable for, consequences.

On a full consideration of the facts and circumstances of this case, I am of opinion that the schooner *Jane*, being the same in the libel mentioned, did not sail from the United States with an intent to violate the act, for a breach whereof the libel is filed. That she did not belong when she sailed from St. Thomas for Guadeloupe, to a citizen of the United States, but to a Danish subject. Jared Shattuck either never was a citizen of the United States, under our present national arrangement, or, if he should at any time have been so considered, he had lawfully expatriated himself, and became a subject of a friendly nation. No fraudulent intent appears in his case, either of eluding the laws of the United States, in carrying on a covered trade, by such expatriation, or that he became a Danish burgher for any purposes which are considered as exceptions to the general rule which seems established on the subject of the right of expatriation. That, being a Danish burgher and subject, he had a lawful right to trade to the island of Guadeloupe, any law of the United States notwithstanding, in a vessel *bona fide* purchased, either from citizens of the United States, or any other vessel documented and adopted

by the Danish laws. I do not rely more than it deserves, on the circumstance of Jared Shattuck's burghership of which the best evidence, to-wit, the brief, or an authenticated copy, has not been produced. I know well, that this brief alone, unaccompanied by the strong ingredients in his case, might be fallacious. I take the whole combination to satisfy me of his being *bona fide* a Danish adopted subject; and altogether it amounts, in my mind, to proof of expatriation.

The master (Wright) produces his Danish burgher's brief. He is a native of Scotland. But even the British case of *Pollard v. Bell*, 8 T. R. 435, to which I have been referred, shows that, with all the inflexibility evidenced in the British code, on the point of expatriation, a vessel was held to be Danish property, if documented according to the Danish laws, though the master, who had obtained a Danish burgher's brief, was a Scotchman. It shows, too, that in the opinion of the British judges (who agree, on this point, with the general current of opinions of civilians and writers on general law), the municipal laws or ordinances of a country do not control the laws of nations. The British courts have gone great lengths to modify their ancient feudal law of allegiance, so as to moderate its rigor, and adapt it to the state of the modern world, which has become most generally commercial. They hold it to be clearly settled, that although a natural-born subject can not throw off his allegiance to the king, but is always amenable for criminal acts against it, yet for commercial purposes he may acquire the rights of a citizen of another country. (Com. Rep. 677, 689.) I cite British authorities because they have been peculiarly tenacious on this subject. Naturalization in this country may sometimes be a mere cover; so may, and, no doubt, frequently are, burghers' briefs. But the case of Shattuck is accompanied with so many corroborating circumstances, added to his brief, as to render it, if not incontrovertibly certain, at least, an unfortunate case on which to rest a dispute as to the general subject of expatriation. I am not disposed to treat lightly the attachment a citizen of the United States ought to bear to his country. There are circumstances in which a citizen ought not to expatriate himself. He never should be considered as having changed his allegiance, if mere temporary objects, fraudulent designs, or incomplete change of domicil, appear in proof. If there are any such in Shattuck's case, they do not appear, and therefore, I must take it for granted that they do not exist. That, therefore, the ultimate destruction of his voyage, and sale of his cargo, are illegal.

The vessel must be restored, and the amount of sales of the cargo paid to the claimant, or his lawful agent, together with costs, and such damages as shall be assessed by the clerk of this court, who is hereby directed to inquire into and report the amount thereof. And for this purpose, the clerk is directed to associate

with himself two intelligent merchants of this district, and duly inquire what damage Jared Shattuck, the owner of the schooner *Charming Betsy* and her cargo, hath sustained, by reason of the premises. Should it be the opinion of the clerk, and the assessors associated with him that the officers and crew of the *Constellation* benefited the owner of *The Charming Betsy*, by the rescue from the French captors, they should allow in the adjustment, reasonable compensation for this service.

(Signed) RICHARD PETERS.

28th April, 1801.

On the 15th of May following, upon the report of the clerk and assessors, a final decree was entered for \$20,594.16 damages, with costs. From this decree, the libellant appealed to the circuit court, who adjudged, "that the decree of the district court be affirmed, so far as it directs restitution of the vessel, and payment to the claimant of the net proceeds of the sale of the cargo in Martinique, deducting the costs and charges there, according to the account exhibited by Captain Murray's agent, being one of the exhibits in this cause: and that the said decree be reversed for the residue, each party to pay his own costs, and one moiety of the custody and wharfage bills for keeping the vessel until restitution to the claimant." From this decree, both parties appealed to the supreme court.

The cause was argued, at last term, by *Martin, Key and Mason*, for the claimant. No counsel was present for the libellant.

For the *claimant* it was contended that the sale of the schooner to Shattuck was *bona fide*, and that he was a Danish subject. That although she was in possession of French mariners, she was not an armed French vessel, within the acts of congress, which authorized the capture of such vessels. That neutrals are not bound to take notice of hostilities between two nations, unless war has been declared: that the right of search and seizure is incident only to a state of war. That neutrals are not bound to take notice of our municipal regulations: that the non-intercourse act was simply a municipal regulation, binding only upon our own citizens, and had nothing to do with the law of nations; it could give no right to search a neutral. That in all cases where a seizure is made under a municipal law, probable cause is no justification, unless it is made so by the municipal law under which the seizure is made.

As to the position that the sale was *bona fide*, the counsel for the claimant relied on the evidence, which came up with the transcript of

the record, which was very strong and satisfactory. Upon the question whether Shattuck was a Danish subject, or a citizen of the United States, it was said that although he was born in Connecticut, yet there was no evidence that he had ever resided in the United States, since their separation from Great Britain. But it appears by the testimony that he resided in St. Thomas, during his minority, and served his apprenticeship there. That he had married into a family in that island; had resided there ever since the year 1789; had complied with the laws which enabled him to become a burgher, and had carried on business as such, and had for some years, been the owner of vessels and lands. Even if, by birth, he had been a citizen of the United States, he had a right to expatriate himself. He had, at least, the whole time of his minority in which to make his election of what country he would become a citizen. Every citizen of the United States has a right to expatriate himself and become a citizen of any other country which he may prefer, if it be done with a *bona fide* and honest intention, at a proper time, and in a public manner. While we are inviting all the people of the earth to become citizens of the United States, it surely does not become us to hold a contrary doctrine, and deny a similar choice to our own citizens. Circumstances may, indeed, show the intention to be fraudulent and collusive, and merely for the purpose of illicit trade, etc. But such circumstances do not appear in the present case. Shattuck was fairly and *bona fide* domiciliated at St. Thomas before our disputes arose with France. The act of Congress, "further to suspend," etc., can not, therefore, be considered as operating upon such a person. The first act to suspend the intercourse was passed on the 13th of June, 1798 (1 U. S. Stat. 565), and expired with the end of the next session of Congress. The next act, "further to suspend," etc., was passed on the 9th of February, 1799 (*ibid.* 613), and expired on the 3d of March, 1800. The act upon which the present libel is founded, and which has the same title with the last, was passed on the 27th of February, 1800 (2 *ibid.* 7). All the acts are confined in their operations to persons resident within the United States, or under their protection.

She was not such an armed French vessel as comes within the description of those acts of Congress, which authorized the hostilities with France. She had only one musket, twelve ounces of powder, and twelve ounces of lead. The only evidence of other arms arises from the deposition of one McFarlan. But he did not go on board of her

until some days after the capture, and his deposition is inadmissible testimony, because he was entitled to a share of the prize-money, if the vessel should be condemned; and although a release from him to Captain Murray appears among the papers, yet that release was not made, until after the deposition was taken; and the fact is expressly contradicted by other testimony. The mere possession, by nine Frenchmen, did not constitute her an armed vessel. She was unable to annoy the commerce of the United States, which was the reason of the adjudication of this court, in the case of *The Amelia*. (See *Talbot v. Seeman*, 1 Cr. 1.) The *procès verbal* is no evidence of any fact but its own existence. If she had arms, they ought to have been brought in, as the only competent evidence of that fact. No arms are libelled, and none appear, by the account of sales, to have been sold in Martinique.

It being, then, a neutral unarmed vessel, Captain Murray had no right to seize and send her in. A right to search a neutral arises only from a state of public known war, and not from a municipal regulation. In time of peace, the flag is to be respected. Until war is declared, neutrals are not bound to take notice of it.

The decrees of both the courts below have decided that the vessel was not liable to capture. The only question is, whether the claimant is entitled to damages? Captain Murray has libelled her upon the non-intercourse act. He does not state that he seized her, because she was a French armed vessel, although he states her to be armed, at the time of capture. It has also been decided by both the courts that she is Danish property. If an American vessel had been illegally captured by Captain Murray, he would have been liable for damages; *a fortiori* in the case of a foreign vessel where, from motives of public policy, our conduct ought not only to be just but liberal.

In cases of personal arrest, if no crime has in fact been committed, probable cause is not a justification, unless it be made so by municipal law. As in the case of hue and cry, he who raises it is liable, if it be false. If the sheriff has a writ against A, and B is shown to him as the person, and he arrests B instead of A, he is liable to an action of trespass at the suit of B. (*Wale v. Hill*, 1 Bulst. 149.) So, if he replevies wrong goods, or takes the goods of one, upon a *fi. fa.* against another. In these cases, it is no justification to the officer, that he was informed, or believed, he was right. He must in all cases seize at his peril. So it is with all other officers, such as those of the revenue,

etc., probable cause is not sufficient to justify, unless the law makes it a justification. If the information is at common law, for the thing seized, and the seizure is found to have been illegally made, the injured party must bring his action of trespass; but by the course of the admiralty, the captor, being in court, is liable to a decree against him for damages. *The Fabius*, 2 Rob., 202. The case of *Wale v. Hill*, in 1 Bulst. 149, shows that where a crime has not been committed, there, probable cause can be no justification. But where a crime has been committed, the party arresting can not justify by the suspicion of others; it must be upon his own suspicion.

In the case of *Papillon v. Buckner*, Hardr. 478, although the goods seized had been condemned by the commissioners of excise, yet it was not held to be a good justification. In *Purviance v. Angus*, 1 Dall. 182, it was held that an error in judgment would not excuse an illegal capture; and in *Leglise v. Champante*, 2 Str. 820, it is adjudged that probable cause of seizure will not justify the officer.¹

In 3 Anstr. 896, is a case of seizure of hides, where no provision was made in the law that probable cause should be a justification. This case cites *Pickering v. Truste*, 7 T. R. 53. For what reason do the revenue laws provide that probable cause shall be a justification, if it would be so, without such a provision? In these cases, the injury by improper seizures can be but small compared with those which might arise under the non-intercourse law. Great Britain has never made probable cause an excuse for seizing a neutral vessel for violating her municipal laws. A neutral vessel is only liable to your municipal regulations, while in your territorial jurisdiction; but as soon as she gets to sea, you have lost your remedy: you can not seize her on the high seas. Even in Great Britain, if a vessel gets out of the jurisdiction of one court of admiralty, she can not be seized in another. It is admitted that a law may be passed authorizing such a seizure, but

¹The Ch. J. observed, that this case was overruled two years afterwards, in a case cited in a note to Gwillim's edition of Bac. ab.² The case cited in the note is from 12 Vin. 173. Tit. evidence. P. b. 6. in which it is said "that Lord Ch. Baron Bury, *Montague and Page*, against *Price*, held that where an officer had made a seizure, and there was an information upon it, etc., which went in favour of the party who afterwards brings trespass; the shewing these proceedings was sufficient to excuse the officer: It was competent to make out a probable cause for his doing the act. Mich. 6. Geo."

²The case of *Leglise v. Champante* was in 2 Geo. 2. That cited in the note to Bac. ab. referred to by the Ch. J. was in 6 Geo. 1. The mistake arises from the note in Gwillim's edition not mentioning the date of the case cited from *Viner*.

then it becomes a question between the two nations. If the present circumstances are sufficient to raise a probable cause for the seizure, and if such probable cause is a justification, it will destroy the trade of the Danish islands. The inhabitants speak our language, they buy our ships, etc. It will be highly injurious to the interests of the United States; and this court will consider what cause of complaint it would furnish to the Danish nation. If a private armed vessel had made this seizure, the captain and owners would have been clearly liable on their bond, which the law obliges them to give. The object of this act of Congress was more to prevent our vessels falling into the hands of the French than to make it a war measure, by starving the French islands.

Even if a Danish vessel should carry American papers and American colors, it would be no justification. In a state of peace, we have no right to say they shall not use them, if they please. In time of war, double papers, or throwing over papers, are probable causes of seizure, but this does not alter the property; it is no cause of condemnation. The vessel is to be restored, but without damages.

The mode of ascertaining the damages adopted by the district court, is conformable to the usual practice in courts of admiralty. See *Mariotti's Rep.*, and in the same book, p. 184, in the case of *The Vanderlee*, liberal damages were given.

In the revenue laws of the United States, vol. 4, p. 391, probable cause is made an excuse for the seizure; but no such provision is, or ought to have been, made in the non-intercourse law. The powers given were so liable to abuse that the commander ought to act at his peril.

The Chief Justice mentioned the case of *The Sally*, Captain Joy, in 2 Rob. 185 (Amer. edit.), where a court of vice-admiralty had decreed, in a revenue case, that there was no probable cause of seizure.

This cause came on again to be argued, at this term, by *Dallas*, for the libellant, and *Martin* and *Key*, for the claimant.

Dallas, as a preliminary remark, observed, that the judge of the district court had referred to the clerk and his associates to ascertain whether any and what salvage should be allowed. This was an improper delegation of his authority, not warranted by the practice of courts of admiralty, nor by the nature of his office. Although they had not reported upon this point, yet he submitted it to the court for their consideration.

After stating the facts which appeared upon the record, and such as were either admitted or proved, he divided his argument into three general points.

1. That Jared Shattuck was a citizen of the United States at the time of capture and recapture; and therefore, the vessel was subject to seizure and condemnation, under the act of Congress usually called the non-intercourse act.

2. That she was in danger of condemnation by the French, and therefore, if not liable to condemnation under the act of Congress, Captain Murray was at least entitled to salvage.

3. That if neither of the two former positions can be maintained, yet Captain Murray had probable cause to seize and bring her in, and therefore, he ought not to be decreed to pay damages.

I. The vessel was liable to seizure and condemnation under the non-intercourse act; Shattuck being a citizen of the United States at the time of recapture. Captain Murray's authority to capture *The Charming Betsy* depends upon the municipal laws of the United States, expounded by his instructions, and the law of nations. Before the non-intercourse act, measures had been taken by Congress to prevent and repel the injuries to our commerce which were daily perpetrated by French cruisers. By the act of 28th May, 1798 (1 U. S. Stat. 561), authority was given to capture "armed vessels sailing under authority, or pretense of authority, from the republic of France," etc., and to retake any captured American vessel. The act of 28th June, 1798 (*ibid.* 574), regulates the proceedings against such vessels, when captured, ascertains the rate of salvage for vessels recaptured, and provides for the confinement of prisoners, etc. The act of July 9th, 1798 (*ibid.* 578), authorizes the capture of armed French vessels anywhere upon the high seas, and provides for the granting commissions to private armed vessels, etc.

The right to retake an armed or unarmed neutral vessel, in the hands of the French, is nowhere expressly given; but is an incident growing out of the state of war; and is implied in several acts of Congress. This was decided in the case of *Talbot v. Seeman*, in this court, at August term, 1801 (1 Cr. 33). The right of recapture, carrying with it the right of salvage, gave the right of bringing into port; and that port must be a port of the captor.

The first non-intercourse act was passed June 13th, 1798 (1 U. S. Stat. 565); a similar act was passed February 9th, 1799 (*ibid.* 613).

The act upon which the present libel is founded was passed February 27th, 1800 (2 *ibid.* 7). These are not to be considered as mere municipal laws for the regulation of our own commerce, but as a part of the war measures which it was found necessary at that time to adopt. It was, *quoad hoc*, tantamount to a declaration of war.

Happily, there is not, and has not been, in the practice of our government, an established form of declaring war. Congress have the power, and may, by one general act, or by a variety of acts, place the nation in a state of war. So far as Congress have thought proper to legislate us into a state of war, the law of nations in war is to apply. By the general laws of war, a belligerent has a right not only to search for her enemy, but for her citizens trading with her enemy. If authorities for this position were necessary, a variety of cases decided by Sir William Scott might be cited.

As to the present case, France was to be considered as our enemy. The non-intercourse act of 1800 prohibits 'all commercial intercourse "between any person or persons resident within the United States, or under their protection, and any person or persons resident within the territories of the French Republic, or any of the dependencies thereof." And declares that "any ship or vessel, owned, hired or employed, in whole or in part, by any person or persons resident within the United States, or any citizen or citizens thereof, resident elsewhere," etc., "shall be forfeited, and may be seized and condemned." A citizen of the United States, resident "elsewhere," must mean a citizen resident in a neutral country. If Shattuck was such a citizen, the case is clearly within the statute. It is not necessary that the vessel should be registered as an American vessel; it is sufficient, if owned by a citizen of the United States: registering is only necessary to give the vessel the privileges of an American bottom. Nor is it necessary that she should have been built in the United States.

By the 8th section of the act of 27th February, 1800 (2 U. S. Stat. 10), reasonable suspicion is made a justification of seizure, and sending in for adjudication. The officer is bound to act upon suspicion, and that suspicion applies both to the character of the vessel, and to the nature of the voyage. Although the act of Congress mentions only vessels of the United States, still, from the nature of the case, the right to seize and send in must extend to apparent as well as real American vessels.

Such is the contemporaneous exposition given by the instructions

of the executive.¹ The words of these instructions are: "You are not only to do all that in you lies, to prevent all intercourse, whether direct or circuitous, between the ports of the United States and those of France and her dependencies, in cases where the vessels or cargoes are apparently, as well as really American, and protected by American papers only, but you are to be vigilant that vessels or cargoes, really American, but covered by Danish or other foreign papers, and bound to or from French ports, do not escape you." The law and the instructions having thus made it his duty to act on reasonable suspicion, he must be safe, though the ground of suspicion should eventually be removed.

Under our municipal law, therefore, the following propositions are maintainable: 1. That a vessel captured by the French, sails under French authority; and if armed, is, *quoad hoc*, a French armed vessel. The degree of arming is to be tested by the capacity to annoy the unarmed commerce of the United States. 2. The right to recapture an unarmed neutral is an incident of the war, and implied in the regulations of Congress. 3. The non-intercourse law justifies the seizure of apparent, as well as of real American vessels.

Nor does this doctrine militate with the law of nations. A war, in fact, existed between the United States and France. An army was raised, a navy equipped, treaties were annulled, the intercourse was prohibited, and commissions were granted to private armed vessels. Every instrument of war was employed; but its operation was confined to the vessels of war of France upon the high seas. So far as the war was allowed, the laws of war attached.

That it was a public war, was decided in the case of *Bas v. Tingy*, in this court, February term, 1800 (4 Dall. 37). No authorities are necessary to show that a state of war may exist without a public declaration. And the right to search follows the state of war. Vattel, lib. 3, c. 7, § 114; *The Maria*, 1 Rob. 304; *Garrels v. Kensington*, 8 T. R. 234. Whether the vessel was American or Danish, she was taken out of the hands of our enemy.

¹Upon Mr. Dallas's offering to read the instructions.

CHASE, J., said, he was always against reading the instructions of the executive; because if they go no further than the law, they are unnecessary; if they exceed it, they are not warranted.

MARSHALL, Ch. J. I understand it to be admitted by both parties, that the instructions are part of the record. The construction, or the effect they are to have, will be the subject of further consideration. They may be read.

CHASE, J. I can only say, I am against it, and I wish it to be generally known. I think it a bad practice, and shall always give my voice against it.

The law of nations in war gives not only the right to search a neutral, but a right to recapture from the enemy. On this point, the case of *Talbot v. Seeman* is decisive, both as to the law of nations, and as to the acts of Congress, and that the rule applies as well to a partial as to a general war. Captain Murray's authority, then, was derived, not only from our municipal law, and his instructions, but from the law of nations. If he has pursued his authority in an honest and reasonable manner, although he may not be entitled to reward, yet he can not deserve punishment.

It remains to consider whether the vessel was, in fact, liable to seizure and condemnation. What were the general facts to create suspicion at the time? 1. The vessel was originally American. The transfer was recent, and since the non-intercourse law. The voyage was to a dependency of the French Republic, and therefore prohibited, if she was really an American vessel. 2. The owner was an American by birth. The master was a Scotchman. The crew were not Danes, but chiefly Americans, who came from Baltimore. 3. The *procès verbal* calls her an American vessel; which was corroborated by the declarations of some of the crew. 4. The practice of the inhabitants of the Danish islands to cover American property in such voyages.

What was there, then, to dispel the cloud of suspicion, raised by these circumstances? 1. The declarations of Wright, the master, whose testimony was interested, inconsistent with itself, and contradicted by others. 2. The documents found on board.

These were no other than would have been found, if fraud had been intended. These were, 1. The sea-letter or pass from the governor-general of the Danish islands, who did not reside at St. Thomas, but at St. Croix. It states only by way of recital that the vessel was the property of Jared Shattuck, a burgher and inhabitant of St. Thomas. It does not state that he was naturalized or a subject of Denmark. 2. The muster-roll, which states the names and number of the master and crew, who were ten besides the captain, viz., William Wright, master; David Weems, John Robinson, Jacob Davidson, John Lampey, John Nicholas, Frederick Jansey, George Williamson, William George, Prudentio, a Corsican, and Davy Johnson, a Norwegian. There is but one foreign name in the whole. Wright, in his deposition, says that three were Americans, one a Norwegian, and the rest were Danes, Dutch and Spaniards. The muster-roll was not on oath, but was the mere declaration of the owner. 3. The invoice, which only says that

Shattuck was the owner of the cargo. 4. The bill of lading, which says that he was the shipper. 5. The certificate of the oath of property of the cargo, states only by way of recital, that Shattuck, a burgher, inhabitant and subject, etc., was the owner of the cargo, but says nothing of the property in the vessel. By comparing this certificate with the oath itself, it appears that the word "subject" has been inserted by the officer, and was not in the original oath. 6. Shattuck's instructions to Captain Wright. 7. The bill of sale by Phillips, the agent of the American owners, to Shattuck; but his authority to make the sale was not on board.

To show what little credit such documents are entitled to, he cited the opinion of Sir W. Scott, in the case of *The Vigilantia*, 1 Rob. 6-8 (Amer. ed.), and in the case of *The Odin*, (*ibid.* 208-211). The whole evidence on board was a mere custom-house affair, all depending upon his own oath of property. His burgher's brief was not on board, nor did it appear, even by his own oath, that Shattuck was a burgher. And no document is yet produced in which he undertakes to swear that he is a Danish subject. Such documents could not remove a reasonable suspicion founded upon such strong facts. There could never be a seizure upon suspicion, if this was not warrantable at the time.

What has appeared since, to remove the suspicion, and to prove Shattuck to be a Danish subject? All the original facts remain, and the case rests on Shattuck's expatriation, whence arise two inquiries: 1. As to the right, in point of law, to expatriate. 2. As to the exercise of the right, in fact.

1. As to the right of expatriation. He was a native of Connecticut, and for aught that appears in the record, remained here until the year 1789, when we first hear of him in the island of St. Thomas. This was after the revolution, and therefore, there can be no question as to election, at least, there is no proof of his election to become a subject of Denmark.

If the account of the case of *Isaac Williams*, 1 Tuck. Bl., part 1, App. p. 436,¹ is correct, it was the opinion of Ch. J. Ellsworth, that a

¹The state of the case and the opinion of Ch. J. ELLSWORTH, as extracted by Judge Tucker, from "*The National Magazine*," No. 3, p. 254, are as follow.

On the trial of Isaac Williams in the *District (qu. Circuit?)* Court of Connecticut, Feb. 27, 1797, for accepting a commission under the French Republic, and under the authority thereof committing acts of hostility against Great Britain, the defendant alleged, and offered to prove, that he had expatriated himself from the United States and become a French citizen before the com-

citizen of the United States could not expatriate himself. That learned judge is reported to have said in that case, that the common law of this country remains the same as it was before the revolution. But in the case of *Talbot v. Jansen*, 3 Dall. 133, this court inclined to the opinion that the right exists, but the difficulty was, that the law had not pointed out the mode of election and of proof.

It must be admitted, that the right does exist, but its exercise must be accompanied by three circumstances: 1. Fitness in point of time. 2. Fairness of intent. 3. Publicity of the act.

But the right of expatriation has certain characteristics, which distinguish it from a locomotive right, or a right to change the domicile. By expatriation, the party ceases to be a citizen and becomes an alien. If he would again become a citizen, he must comply with the terms of the law of naturalization of the country, although he was a native.

commencement of the war between France and England. This produced a question as to the right of expatriation, when Judge ELLSWORTH, then Chief Justice of the United States, is said to have delivered an opinion to the following effect.

The common law of this country remains the same as it was before the revolution. The present question is to be decided by two great principles; one is, that all the members of a civil community are bound to each other by compact; the other is, that one of the parties to this compact can not dissolve it by his own act. The compact between our community and its members is, that the community shall protect its members; and on the part of the members, that they will at all times be obedient to the laws of the community and faithful to its defense. It necessarily results that the member can not dissolve the compact without the consent, or default of the community. There has been no consent, no default. Express consent is not claimed; but it is argued that the consent of the community is implied, by its policy, its condition, and its acts. In countries so crowded with inhabitants that the means of subsistence are difficult to be obtained, it is reason and policy to permit emigration; but our policy is different, for our country is but scarcely settled, and we have no inhabitants to spare. Consent has been argued from the condition of the country, because we are in a state of peace. But though we were in peace, the war had commenced in Europe; we wished to have nothing to do with the war—but the war would have something to do with us. It has been difficult for us to keep out of the war—the progress of it has threatened to involve us. It has been necessary for our government to be vigilant in restraining our own citizens from those acts which would involve us in hostilities.

The most visionary writers on this subject do not contend for the principle in the unlimited extent, that a citizen may at any, and at all times, renounce his own, and join himself to a foreign country.

Consent has been argued from the acts of our government permitting the naturalization of foreigners. When a foreigner presents himself here, we do not inquire what his relation is to his own country; we have not the means of knowing, and the inquiry would be indelicate; we leave him to judge of that. If he embarrasses himself by contracting contradictory obligations, the fault and folly are his own; but this implies no consent of the government that our own citizens should also expatriate themselves. It is therefore my opinion, that these facts which the prisoner offers to prove in his defense, are totally irrelevant, etc. The prisoner was accordingly found guilty, fined and imprisoned.

But by a mere removal to another country, for purposes of trade, whatever privileges he may acquire in that country, he does not cease to be a citizen of this.

With respect to other parties at war, the place of domicile determines his character, enemy or neutral, as to trade. But with respect to his own country, the change of place alone does not justify his trading with her enemy; and he is still subject to such of her laws as apply to citizens residing abroad. *The Hoop*, 1 Rob. 165; *Gist v. Mason*, 1 T. R. 84; and particularly *Potts v. Bell*, 8 *ibid.* 548, where this principle is advanced by Doct. Nicholl, the king's advocate, in p. 555, admitted by Doct. Swabey, in p. 561, and decided by the court.

This principle of general law is fortified by the positive prohibition of the act of Congress. In France, the character of French citizen remains, until a naturalization in a foreign country. In the United States, we require an oath of abjuration, before we admit a person to be naturalized. If he was naturalized, he has done an act disclaiming the protection of the United States, and is no longer bound to his allegiance. But if he has acquired only a special privilege to trade, it must be subject to the laws of his country.

2. But has he, in fact, exercised the right of expatriation? And is it proved by legal evidence? His birth is *prima facie* evidence that he is a citizen of the United States, and throws the burden of proof upon him. No law has been shown, by which he could be a naturalized subject of Denmark, nor has he himself ever pretended to be more than a burgher of St. Thomas. What is the character of a burgher, and what is the nature of a burgher's brief? It is said that to entitle a person to own ships, there must have been a previous residence; but no residence is necessary to enable a man to be a master of a Danish vessel. It is a mere license to trade; a permit to bear the flag of Denmark; like the freedom of a corporation. It implies neither expatriation, an oath of allegiance, nor residence. *The Argo*, 1 Rob. 133; *Pollard v. Bell*, 8 T. R. 434. These cases show with what facility a man may become a burgher; that it is a mere matter of purchase, and that it is a character which may be taken up and laid aside at pleasure, to answer the purposes of trade.

But there is no evidence that he ever obtained even this burgher's brief. He went from Connecticut, a lad, an apprentice or clerk, in 1788 or 1789: he was not seen in business there until 1795 or 1796. In going, in 1789, he had no motive to expatriate himself, as there

was then no war. We find him first trading in 1796, after the war, and the law of Denmark forbids a naturalization in time of war. At what time, then, did he become a burgher? If he ever did become such, in fact, and it was in time, he can prove it by the record. Wright's burgher's brief is produced, and shows that they are matters of record. The brief itself, then, or a copy from the record, duly authenticated, is the best evidence of the fact, and is in the power of the party to produce. Why is it withheld, and other *ex parte* evidence picked up there, and witnesses examined here? All the evidence they have produced is merely matter of inference. They have examined witnesses to prove that he carried on trade in St. Thomas, owned ships and land, married, and resided there. By the depositions, they prove that a man is not by law permitted to do these things, without being a burgher; and hence, they infer his burghership.

These facts are equivocal in themselves, and not well proved. Certificates of citizenship are easily obtained, but are not always true. This is noticed by Sir W. Scott, in the cases before cited. A case happened in this country, *United States v. Villato*, 2 Dall. 370; where a person having taken the oath of allegiance to Pennsylvania, agreeable to the naturalization act of that State, obtained a certificate from a magistrate, confirmed by the attestation of the supreme executive of the State, that he was a citizen of the United States. But upon a trial in the circuit court of Pennsylvania, it was adjudged that he was not a citizen. *Captain Barney* also went to France, became a citizen, took command of a French ship of war, returned to this country, and is now certified to be a citizen of the United States. So, in the case of the information against the ship *John and Alice*, Captain Whitesides, he was generally supposed to be a citizen of the United States. On the trial, evidence of his citizenship was called for, when it appeared that his father brought him into this country in the year 1784, and remained here until 1792, when the father died. Neither he nor his father were naturalized, and the vessel was condemned. These instances show the danger of crediting such custom-house certificates.

All these certificates, in the present case, do not form the best evidence, because better is still in the possession of the party, and he ought to produce it. The general and fundamental rules of evidence are the same in courts of admiralty, as in courts of common law. If they appear to relax, it is only in that stage of the business where they are obliged to act upon suspicion. In the present case, the opinion of

merchants only is taken as to the laws of Denmark. No judicial character, not even a lawyer, was applied to. Certificates of merchants are no evidence of the law. *The Santa Cruz*, 1 Rob. 58. The evidence offered is both *ex parte* and *ex post facto*. Fraud is not to be presumed, but why was not the burgher's brief produced, as well as the other papers, such as the oath of property, etc., when it was certainly the most important paper in the case? The only reason which can be given is that it did not exist. It was a case like that of Captain Whitesides, where people were led into a mistake from the length of his residence, and from having seen him there from the time of his youth.

Upon the whole, then, we have a right to conclude that Jared Shattuck was not a Danish subject; or that if he was, the fact is not proved, and therefore he remains a citizen of the United States, in the words of the act of Congress, "residing elsewhere." The consequence must be a condemnation of the vessel.

II. She was in danger of condemnation in the French courts of admiralty, and therefore Captain Murray is entitled to salvage. This depends: 1. On the right to retake; 2. On the degree of danger; and 3. The service rendered.

1. He had a right to retake, on the ground of suspicion of illicit trade, in violation of the non-intercourse law, as well as on the ground of her being a vessel sailing under French authority, and so armed as to be able to annoy unarmed American vessels. He had also a right to bring her in for salvage, if a service was rendered. If his right to retake depends upon the suspicion of illicit trade, or upon her being a French armed vessel, he could take her only into a port of the United States.

The point of illicit trade has already been discussed. That the vessel was sailing under French authority is certain; the only question is, whether she was capable of annoying our commerce. She had port-holes, a musket, powder and balls, and eight Frenchmen, who, probably, as is usual, had each a cutlass. Vessels have been captured, without a single musket; three or four cutlasses are often found sufficient. The vessel was sufficiently armed to justify Captain Murray, under his instructions, in bringing her in.

If, then, the taking was lawful, has she been saved from such danger as to entitle Captain Murray to salvage? There is evidence that Captain Wright requested Captain Murray to take the vessel, to prevent her falling into the hands of the English. He consented to be carried

into Martinique. He protested only against the privateer, not against Captain Murray. His letter to Captain Murray does not complain of the recapture, but of the detention. The taking was an act of humanity, for if Captain Murray had taken out the Frenchmen, and left the vessel with only Captain Wright and the boy, they could not have navigated her into port, and she must have been lost at sea, or fallen a prey to the brigands of the islands. This alone was a service which ought to be rewarded with salvage.

But she was in danger of condemnation in the French courts of admiralty. The case of *Talbot v. Seeman* has confirmed the principle adopted by Sir W. Scott, in the case of *The War Onskan*, 2 Rob. 246, that the departure of France from the general principles of the law of nations, varied the rule that salvage is not due for the recapture of a neutral out of the hands of her friend; and that the general conduct of France was such as to render the recapture of a neutral out of her hands, an essential service, which would entitle the recaptors to salvage. If she had been carried into a French port, how unequal would have been the conflict? Who would have been believed, the privateer or the claimant? The Danish papers would have been considered only as a cover for American property. The danger is shown by the apprehensions of Captain Wright and his crew; by the declarations of the privateer; by the *procès verbal*; and by the actual imprisonment of the crew.

But, independent of the general misconduct of France, there are several French ordinances under which she might have been condemned. The case of *Pollard v. Bell*, 8 T. R. 444, shows that such ordinances may justify the condemnation. The case of *Bernardi v. Motteux*, 2 Doug. 575, shows that the French courts actually do proceed to condemnation upon them, as in the case of throwing over papers, etc. So, in the case of *Mayne v. Walter*, Park on Insurance, 414 (363), the condemnation was because the vessel had an English supercargo on board.

By the ordinances of France, *Code des Prises*, vol. 1, p. 306, § 9, "all foreign vessels shall be good prize in which there shall be a supercargo, commissary or chief officer of an enemy's country; or the crew of which shall be composed of one-third sailors of an enemy's state; or which shall not have on board the *rôles d'équipage* certified by the public officers of the neutral places from whence the vessels shall have sailed." And by another ordinance, 1 *Code des Prises*, 303, §

6, "No regard is to be paid to the passports granted by neutral or allied powers, to the owners or masters of vessels, subjects of the enemy, if they have not been naturalized, or if they shall have not transferred their domicil to the states of the said powers, three months before the 1st of September, in the present year; nor shall the said owners or masters of vessels, subjects of the enemy, who shall have obtained such letters of naturalization, enjoy their effect, if, after they shall have obtained them, they shall return to the states of the enemy, for the purpose of their continuing their commerce;" and by the next article, "vessels, enemy built, or which shall have been owned by an enemy, shall not be reputed neutral or allied, if there are not found on board authentic documents, executed before public officers, who can certify their date, and prove that the sale or transfer thereof had been made to some of the subjects of an allied or neutral power, before the commencement of hostilities; and if the said deed or transfer of the property of an enemy to the subject of the neutral or ally, shall not have been duly enregistered before the principal officer of the place of departure, and signed by the owner, or the person by him authorized."

In violation of these ordinances, the chief officer, Captain Wright, was a Scot, an enemy to France: for although he had a burgher's brief, yet it did not appear, that he had resided three months before he obtained it; and we have before seen, that a previous residence was not necessary, by the laws of Denmark, to entitle him to a burgher's brief, for the purpose of being master of a vessel. In the next place, the whole number of the crew, with the master, being eleven, and three of the crew being Americans and the master a Scot, more than one-third of the crew were enemies of France. The muster-roll did not describe the place of nativity of the crew. The vessel was purchased after the commencement of hostilities between France and the United States. And there was no authority on board from the American owners to Phillips, the agent who made the sale, in violation of the regulation of 17th February, 1794, art. 4 (2 *Code des Prises*, p. 14), which declares "the vessel to be good prize, if being enemy built, or belonging originally to the enemy, the neutral, the allied, or the French proprietor, shall not be able to show, by authentic documents, found on board, that he had acquired his right to her before the declaration of war." See also 2 Valin, 249, § 9; 251, § 12, and 244.

What chance of escape had this vessel, under all these ordinances, which the French courts were bound to enforce? The case of *Pollard*

v. Bell, 8 T. R. 434, is precisely in point. The vessel in that case was Danish, and had all the papers usually carried by Danish vessels. But she was condemned in the highest court of appeal in France, because the master was a Scot, who had obtained a Danish burgher's brief, subsequent to the hostilities. Has there, then, been no service rendered?

It is no objection to the claim of salvage, that it is not made in the libel. Salvage is a condemnation of part of the thing saved. The prayer for condemnation of the whole includes the part: it may be made by petition, or even *ore tenus*.

The means used for saving need not be used with that sole view. *Talbot v. Seeman*. As to the *quantum* of salvage, he referred to the opinion of Sir W. Scott, in the case of *The Sarah*, 1 Rob. 263.

III. But if *The Charming Betsy* is not liable to condemnation, under the non-intercourse law, and if Captain Murray is not entitled to salvage, yet the restitution ought to be made of the net proceeds of the sale only, and not with damages and costs.

In maritime cases, probable cause is always a justification. The grounds of suspicion, in the present instance, have been already mentioned; and when to these are added the circumstances, that it was at Captain Wright's request that Captain Murray took possession of the vessel; that he consented to be carried into Martinique; that if he had taken out the Frenchmen, and left the vessel in the midst of the ocean, with only Captain Wright and his boy, they would have been left to destruction; that part of the cargo was damaged, part rifled, and all perishable; and that Captain Murray offered to release the vessel and cargo, on security, there can hardly be a stronger case to save him from a decree for damages.

In the case of the *Two Susannahs*, 2 Rob. 110, it is, by Sir W. Scott, taken as a principle, that a seizure is justified by an order for further proof, and he decreed a restitution of the proceeds only, it not being shown that the captors conducted themselves otherwise than with fair intentions. In the present case, there is no pretense that Captain Murray did not act from the purest motives, and from a wish faithfully to execute his instructions.

Key, contra.—1. The schooner *Charming Betsy* and her cargo were neutral property, and not liable to capture under the non-intercourse law. 2. When recaptured, she was not an armed French ves-

sel capable of annoying our commerce, and therefore not liable under the acts of Congress authorizing the capture of such vessels. 3. She was not in imminent danger when recaptured, and therefore Captain Murray is not entitled to salvage. 4. Under all the circumstances of the case, he acted illegally, and is liable for damages which have been properly assessed.

I. As to the neutral character of the vessel and cargo, he contended: 1. That Jared Shattuck never was an American citizen. 2. That if he was, he had expatriated himself, and had become a Danish subject. 3. That if not a Danish subject, yet he was not a citizen of the United States.

1. The evidence is that he was born in Connecticut, but before the Declaration of Independence, and was, therefore, a natural-born subject of Great Britain. He was in trade for himself, in St. Thomas, in 1794. This he could not do until he was twenty-one years of age, which will carry back the date of his birth to the year 1773. He was an apprentice at St. Thomas in the year 1788 or 1789. There is no evidence of his being in the United States since the Declaration of Independence. But if he had been, yet he went away while a minor, and he could not make his election during his minority. There is no evidence that his parents were citizens of the United States. Being a natural-born subject of Great Britain, he could not become a citizen of the United States, unless he was here at the time of the revolution, or his parents were citizens, or unless he became naturalized according to law. It is incumbent upon Captain Murray to prove him to be a citizen of the United States. It is sufficient for us to show that he was born a subject of Great Britain. They must show how he became a citizen. This is a highly penal law, and everything must be proved which is necessary to bring the case within the penalty.

2. But if he ever was a citizen of the United States, he had expatriated himself. That every man has a right to expatriate himself, is admitted by all the writers upon general law; and it is a principle peculiarly congenial to those upon which our constitutions are founded. Some of the States of the Union have expressly recognized the right, and even prescribed the form of expatriation. But where the form is not prescribed, nothing more is necessary than that it be accompanied with fairness of intention, fitness of time, and publicity of election.

In the present instance, all these circumstances concur. No time could have been more fit than the year 1788 or 1789, when all Europe

and America were in a state of profound peace. His country had then no claim to his service. The fairness of intention is evidenced by its having been carried into effect by an actual *bona fide* residence of ten or eleven years; by serving an apprenticeship; by actual domiciliation; by marriage; by becoming a burgher; by acquiring lands, and by owning ships. The publicity of election is witnessed by the same acts, and by taking the oath of allegiance to Denmark. The United States have prescribed no form of expatriation. All that he could do to render the act public and notorious has been done.

It is said a man can not cease to be a citizen of one state, until he has become a citizen or subject of another. But a man may become a citizen of the world; an alien to all the governments on earth.¹ It is in evidence that by the laws of Denmark a man can not become a subject and carry on trade without being naturalized; that an oath of allegiance and an actual domicil are necessary to naturalization; but that a domicil is not necessary to become a burgher, for the purpose of navigating a Danish vessel.

In the two cases cited from 1 Rob. 133 (*The Argo*), and 8 T. R. 434 (*Pollard v. Bell*), the question was only as to the national character of the master of the vessel, not of the owner; and therefore, they do not apply to the present case.

The burgher's brief of Captain Wright is dated 19th May, 1794, and certifies that he had taken the oath of fidelity to his Danish majesty, and was entitled to all the privileges of a subject.

3. But if the facts stated in the record are not sufficient to prove Shattuck to be a Danish subject, yet they do not prove him to be a citizen of the United States, and if he is not a citizen of the United States, it is immaterial of what country he is a subject. By the law of nature and nations, a man may, by a *bona fide* domicil, and long continued residence in a country, acquire the character of a neutral, or even of an enemy. In the case of *Scot v. Schwartz*, Comyns, 677, it was decided that residence in and sailing from Russia gave the mariners of a Russian ship the character of Russian mariners, within the meaning of the British navigation act: and in the case of *The Harmony*, 2 Rob. 264, Sir W. Scott condemned the goods of an American citizen, because, by a residence in France, for four years, he had

¹Ch. J.—There can be no doubt of that.

Dallas, said he had been misunderstood. He only said that the act of becoming a citizen of another state was the most public act of expatriation and the best evidence of the fact.

acquired a domicile in that country which had given his property the character of the goods of an enemy. In the case of *Wilson v. Marryat*, 8 T. R. 31, it was adjudged that a natural-born British subject might acquire the character of a citizen of the United States for commercial purposes.

II. *The Charming Betsy* was not a French armed vessel, capable of annoying our commerce, and therefore not liable to capture or condemnation, by virtue of the limited war which existed between the United States and France. In supporting this proposition, it is not intended to interfere with the decision of this court in the case of *Talbot v. Seeman*. There is a great difference between the force of the *Amelia* in that case, and that of *The Charming Betsy*. The *Amelia* had eight cannon, was manned by twelve Frenchmen, and had been in possession of the French ten days, and must be admitted to have been such an armed French vessel as came within the meaning of the acts of Congress.

But in the present case, the vessel was built at Baltimore, and owned by citizens of the United States. When she sailed from Baltimore, she had four cannon, a number of muskets, etc., which Shattuck was obliged to purchase with the vessel, and which he afterwards sold at a considerable loss. The master swears, that at the time of recapture, she had only one musket, a few balls and twelve ounces of powder; and although McFarlan deposes to a greater quantity of arms, yet it appears that he did not go on board of her until eight days after the recapture. If arms were on board, they ought to have been brought in with the vessel: this is particularly required by the act of Congress. No arms are mentioned in the account of sales; it is to be presumed, as none were brought in, that none were on board. The master expressly swears that the French put no force or arms on board, when they took her. She could not, therefore, be such an armed vessel as was intended by the acts of Congress.

III. She was not in imminent danger when recaptured, and therefore the recaptors are not entitled to salvage. It is a general principle that the recapture of a neutral does not entitle to salvage.

It is not intended to question the correctness of the decision of this court in the case of *Talbot v. Seeman*, nor that of Sir W. Scott, in the case of *The War Onskan*. Those cases were exceptions to the general rule, because the conduct of France was in violation of the law of nations, and because neutral vessels had no chance of escaping the rapacity of the French prize courts. This system of depredation upon

neutral commerce continued during the years 1798 and 1799. The *Amelia* was recaptured by Captain Talbot, in September, 1799, while the *arrêt* of 18th January, 1798, so injurious to neutral commerce, and the violences of the prize courts, were in full operation.

The *Charming Betsy* was recaptured by Captain Murray, on the 3d of July, 1800. During this interval, great events had occurred in France. On the 9th of November, 1799, Bonaparte was placed at the head of the government, and a new order of things commenced. On the 24th of December, 1799, the *arrêt* of the council of five hundred, of the 18th January, 1798, which made the character of neutral vessels dependent upon the quality of the cargo, and declared good prize all those laden in whole or in part with the productions of England or her possessions, was repealed, and by a new decree, the ordinance of 1778 was reestablished. The government adopted a more enlightened and liberal policy towards neutrals. On the 26th of March, 1800, a new tribunal of prizes was erected, at the head of which was placed the celebrated Portalis, author of the Civil Code. On the 29th of May, 1800, their principles were tested in the case of *The Pegou*, an American ship belonging to Philadelphia. This case was a public declaration to all the world, that they began to entertain a proper respect for the law of nations, and from this time the rule of salvage, as established in the case of *The War Onskan*, ceased.

The Pegou had been condemned in an inferior tribunal. On an appeal to the council of prizes, Portalis, with a degree of liberality and correctness which would confer honor upon any court in the world, declared that "excepting the case when a prize is evidently and actually enemy's property, all questions about the validity or invalidity of prizes, come to the examination of a fact of neutrality." And in discussing the question as to the necessity of a *rôle d'équipage*, he says, "I will begin with the principle, that all questions about neutrality are what are called in law, questions *bona fide*, in which due regard is to be had to facts which are to be properly weighed, without adhering to trifling appearances." "But it would be a gross error, in believing that the want of, or the least irregularity in, one of these papers, could operate so far as to cause the vessel to be adjudged good prize. Sometimes regular papers cover an enemy's property, which other circumstances unmask. In other circumstances, the stamps of neutrality break through omissions and irregularities in the forms, proceeding from mere negligence, or grounded on motives free from fraud.

"We must speak to the point; and in these matters, as well as in

those which are to be determined, we must decide not by mere strict forms, but by the principles of good faith; we must say, with the law, that mere omissions or mere irregularities in the forms, can not prejudice the truth, if it is stated by any other ways: and *si aliquid ex solemnibus deficiat, cum equitas poscit, subveniendum est.*" "The main point in every case is that the judge may be satisfied that the property is neutral or not." He then cited a case decided upon the 6th article of the regulation of the 21st of October, 1744, by which article the act of throwing over papers is made a substantive ground of condemnation. But it was decided that the papers ought to be of such a nature as to prove the property to be enemy's.

The two grounds upon which *The Pegou* was condemned in the inferior tribunal were that she was armed for war, without any commission or authority from the United States, and that there was on board no *rôle d'équipage*, attested by the public officers of the port of departure. She mounted ten guns, and was provided with muskets and other warlike stores. Upon the first point, it was decided in the council of prizes that she was not armed for war, but for lawful defense; and on the second, that a *rôle d'équipage* was not absolutely necessary, if the property appeared otherwise clearly to be neutral.¹

¹There is so much reason, justice and good sense appearing through a bad translation of probably, not a very accurate account of this case, that it is with pleasure transcribed as it has been published in this country from the London public prints.

Opinion of PORTALIS.—After having read the opinion of commissioners of the government, left in writing on the table, which is as follows:

It appears that a judgment of the tribunal of commerce at l'Orient, had granted Captain *Green* the replevy of his vessel and part of the goods and specie which composed the cargo; and that on the appeal entered by the comptroller of marine at l'Orient against that judgment, the tribunal of the department of Morbihan declared the vessel and cargo a good prize.

The grounds on which rested the decision of the tribunal of Morbihan were, that the vessel was armed for war without any commission or authorization from the American Government; and that there was on board no *rôle d'équipage* attested by the public officers of the port of his departure.

The captured claim the nullity of the prize, and that the vessel be reinstated in the situation she was in when captured, and that she be delivered up as well as her cargo, and the dollars which were on board, and also the papers, with damages and interest adequate to the losses they had sustained.

To be able to determine on the respective demands, we must first fix upon the validity or invalidity of the prize, excepting the case when a prize is evidently and actually enemy's property, all questions about the validity or invalidity of prizes come to the examination of a fact of neutrality.

In this case, was the tribunal of Morbihan authorized to determine that the ship *Pegou* was in such circumstances as to be prevented from being acknowledged and respected as neutral?

It is said the vessel was armed for war, and without any authorization from

In another case (*The Statira*), which was decided very shortly after that of *The Pegou*, by the same council of prizes, two questions arose: 1. Whether *The Statira*, being an American vessel captured by a British ship, and recaptured by a French privateer, was liable to confiscation on the ground of her being in the hands of an enemy; and, 2. Whether her cargo was ground of condemnation?

her government; that she mounted 10 guns of different rates, and that muskets and warlike stores have been found in her.

The captured reply, that the vessel being bound to India, was armed for her own defense, and that the warlike ammunition, the muskets and guns, did not exceed what is usual to have on board for long voyages; for my part, I think it is not for having arms on board only, that a vessel can be said to be armed for war. The warlike armament is merely of an offensive nature; it is deemed so when there is no other end than attacking, or at least when every thing shows that attack is the main point of the armament; then a vessel is reputed inimical, or pirate if she has no commission or papers which may remove the suspicion. But defense is of natural right, and every means of defense is lawful in voyages at sea, as in every other dangerous occurrence of life.

A vessel consisting of but a small crew, and whose cargo in goods amounted to a considerable sum, was evidently intended for trade, and not for war. The arms found on board were not to commit plunder and hostility, but to avoid them; not for attack, but for defense. The pretense of armament for war, in my opinion, can not be founded.

I am now to discuss the second argument against the captors on the want of a *rôle d'équipage*, attested by the public officers of the place of her departure.

To support the validity of the prize, they allege the regulation of the 21st October, 1774, of the 26th of July, 1778, and the decree of the directory of the 12th Ventose, 5th year, which require a *rôle d'équipage*.

The captured, on their part, claim the execution of the treaty of commerce, between France and the United States of America, of the 6th February, 1778; they contend that general regulations could not derogate from a special treaty, and that the directory could not infringe the treaty by an arbitrary decree.

It is a fact that the regulations of 1774 and 1778, and the decree of the directory require a *rôle d'équipage* asserted by the public officers of the place of departure. It is also a fact, that the *rôle d'équipage* is not mentioned in the treaty of the 6th February, as one of the papers requisite to establish neutrality, but I believe I am not under the necessity of discussing whether the treaty is superior to the regulations, or whether the regulations are superior to the treaty.

I will begin with the principle that all questions about neutrality, are what are called in law, questions *bona fide*, in which due regard is to be had to facts which are to be properly weighed, without adhering to trifling appearances.

Neutrality is to be proved; for this reason, the regulation of marine of 1681, article 9, on prizes, states, that vessels with their cargoes, which shall not have on board charter parties, bills of lading, nor invoices, shall be considered as good prize.

From the same motives, the regulations of 1774 and 1778, put the commanders of neutral vessels under obligation of proving at sea their property being neutral, by passports, bills of lading, invoices and vessels' papers.

The regulation of 1774, whose enacting parts have been renewed by the directory, literally expresses, among the papers requisite to prove neutral property, that there must be a *rôle d'équipage* in due form.

But it would be a gross error to suppose that the want of, or the least irregularity in, one of these papers, could operate so far as to cause the vessel to be adjudged good prize.

On the first point, it was held that the mere capture does not, before condemnation, vest the property in the captor, so as to make it transferable to the recaptor, and therefore no ground of confiscation. On the 2d, there were two inquiries: 1. Whether, in point of law, the character of the vessel, neutral or not, should be determined by the nature of the cargo? 2. Whether the cargo consisted of contraband?

Sometimes regular papers cover an enemy's property, which other circumstances unmask. In other circumstances the stamps of neutrality break through omissions and irregularities in the forms, proceeding from mere negligence, or grounded on motives free from fraud.

We must speak to the point, and in these matters as well as in those which are to be determined, we must decide not by mere strict forms, but by the principles of good faith; we must say with the law, that mere omissions, or mere irregularities in the forms, can not prejudice the truth, if it is stated by any other ways: and *si aliquid ex solemnibus deficiat, cum equitas poscit, subveniendum est*.

Therefore, the regulation of the 26th July, 1778, art. 2, after having stated that the masters of neutral vessels shall prove at sea their property being neutral, by passports, bills of lading, invoices and other vessel papers, adds, one of which at least shall establish the property being neutral, or shall contain an exact description of it.

It is not then necessary in every case to prove the property neutral by the simultaneous concurrence of all the papers enumerated in the regulations. But it is sufficient according to the circumstances, that one of these papers establish the property, if it is not opposed or destroyed by more peremptory circumstances.

The main point in every case is, that the judge may be satisfied that the property is neutral or not.

We have a precedent of what I assert in art. 6, of the regulation of the 21st October, 1774; by that article every vessel belonging to what nation soever, neutral, enemy or ally, from which papers shall be proved to have been thrown overboard, shall be adjudged good prize, on the proof only of the papers having been thrown overboard; nothing can be more explicit.

Some difficulties arose on the execution of that severe clause of the law, which has been renewed by the regulation of 1778.

On the 13th November, 1779, the king wrote to the admiral, that he left entirely to him and to the commissioners of the council of prizes to apply the rigidity of the decree, and of the regulation of the 26th July, or to moderate their clauses as peculiar circumstances would require it in their opinion.

A judgment of the council of the 27th December, in the said year, rendered between Pierre Brandebourg, master of the Swedish ship *Fortune*, and M. de la Rogredourden, captain of the king's xebec the *Fox*, liberated the said vessel notwithstanding some papers had been thrown overboard. It was determined that to ground an adjudication of the vessel on the papers being thrown overboard, they ought to be of such nature as to prove the property enemy's, and that the captain ought to have had a concern in throwing his papers overboard; which was not the case with the Swedish captain.

In this case without discussing whether American captains are obliged or not to exhibit a *rôle d'équipage*, attested by the public officers of the place of their departure, I observe that this *rôle* is supplied by the passport, and that the captured allege the impossibility for them to have their *rôle d'équipage* attested by public officers in Philadelphia, since the intercourse was forbidden, under pain of death, with Philadelphia, where a most tremendous epidemic was raging: I must add, that the passport, the invoice, and all the vessel's papers, establish

As to the first, the commissary (Portalis) reviews the laws upon this subject, prior to the *arrêt* of the council of 500, of the 29th Nivose, year 6 (January 18th, 1798), the severity of which he condemns; but as *The Statira* was captured while it was in force, the captor was entitled to have the capture tried by it. He observes that such regulations are improperly styled laws, and they are essentially variable *pro temporibus et causis*; that they should always be tempered by wisdom and equity. He adverts to the words *in whole or in part*, by which, he says, ought to be understood, a great part, according to the judicial

evidently the property of the vessel and cargo being neutral; none of these papers have ever been disputed. Thus the invalidity of the capture is obvious; whence it follows that every thing which has been taken from them, ought to be restored in kind or by a just indemnification.

As to their claim for damages and interest, I must observe, that such a claim is not in every case the sequel of the invalidity of the capture.

Suspicious proceedings of the captured, may occasion the mistake of the captors. But when the injustice on the part of the captors can not be excused, the captured have a right to damages and interest.

Let us apply these principles to the cause. Could the captors entertain any grounded suspicions against the captain of the ship *Pegou*? was not the neutrality of the ship proved by her being an American built ship, by her flag, by her destination, by the crew being composed of Americans, by her cargo consisting of American goods, without any contraband articles, by the name and the character of Captain Green, very well known by services he rendered to the French nation, by the register, the passport, the invoice, by the papers on board, finally, by the place where she was captured, which was far from any suspicious destination? It was then impossible for the captors to make any mistake; the vessel struck her colors at the first summons, the officers and crew made faithful declarations, they answered plainly in their examination; no pretense whatever was left to the captors; they don't appear to have observed the forms prescribed by the regulation. Some very heavy charges are uttered against them; but I think it is not time yet to take notice of them; they will be discussed when the articles captured are restored.

In these circumstances I am of opinion, that a more absolute and full replevy be granted to Captain Green of the American ship *Pegou*, and her cargo, as well as the papers found on board; as to the claim of damages and interest, made by Captain Green, that the former be granted to him, and they shall be settled by arbitrators in the usual form.

(Signed) PORTALIS.

Paris, 6 Prairial, 8th year.

The council declare that the capture of the ship *Pegou* and her cargo, is null and of no effect; therefore, grant a full and absolute replevy of the vessel, rigging and apparel, together with the papers and cargo, to Captain John Green; as to the damages and interest claimed by Captain Green, the council grant them to him, and they shall be settled by arbitrators in the usual forms.

Done at Paris on the 9th Prairial, 8th year of the Republic.

Present,

Citizen	REDON,	BARENNEs,
Presidents	NIOU CANTE,	DUSAUB,
	MOREAU.	PAVEAL,
	MONTIGNY,	GRANDMAISON,
	MONPLACID,	TOURNACHER.

maxim parum pro nihilo habetur. Upon this principle he is of opinion that a ship ought not to be subject to confiscation, even under the law of the 29th Nivose, unless such a part of the cargo comes under the description of what is there made contraband, as ought to excite a presumption of fraud against all the rest.

The question of contraband related to forty barrels of pitch, part of the cargo of *The Statira*. He observed that pitch was not made contraband by the treaty of 1778, but as France was, by that treaty, entitled to all the advantages of the most favored nation, and as by a subsequent treaty between the United States and Great Britain, pitch was among the enumerated articles of contraband, it necessarily became such in regard to France. He, however, decides the quantity to be too small to justify condemnation, even upon the principle of the law of 24th (*quaere?* 29th) Nivose. And the ship was restored.¹

¹The following account of the case of the *Statira* is extracted from London papers of June 1700.

We stated to our readers some time ago the principles upon which the new council of prizes at Paris proceeded with respect to neutral vessels, and we gave the decision at length upon the American ship *Pegou*, which was ordered to be restored with costs. That decision showed, that a greater degree of system had been established, and that the loose and frequently unjust principles upon which the directory acted with respect to captures of neutral ships, were meant to be abandoned. The following is the decision of the council on another case, that of the *Statira*:

The *Statira*, Captain Seaward, an American ship, had been captured by an English vessel, and recaptured by the French privateer the *Hasard*.

The first point which the commissary considers is, the effect which the *Statira* having been in the possession of the English ought to have.

He observes, that if the vessel captured and recovered had been French, and recaptured by a national vessel, there would have been nothing due to the recaptor, because this is only the exercise of that protection which the state owes to all its subjects in all circumstances. If it had been recaptured by a privateer, the French regulation gives the property of the vessel to the recaptor, on account of the risk and danger of privateering. It might be an act of generosity to restore the vessel to the original owner, but it is not of right that it should.

In the next place, he considers the case of a neutral recaptured from the enemy. If really neutral, he says the vessel must be released. The ground of this higher degree of favor for a neutral he states to be, that the French vessel must have been lost in the country. But it is not certain that the neutral captured by an enemy may not be released by the admiralty courts of the enemy. The mere capture does not vest the property immediately in the captor, so as to make it transferable to the recaptor. The commissary considers the property not vested in the captor till sentence of condemnation.

We believe this is much milder, and more favorable for neutrals than our practice. The being a certain time in the enemy's custody, or *intra maenia*, transfers the property to the captor. This was held in the late well-known case of the Spanish prize, captured by the French, and recaptured by the English. It is to be observed, however, that a principle of reciprocity is pursued, and that we give the same indulgence to the neutral which they would have given us in a similar case.

These cases are read to show that France had abstained from those violations of the law of nations which had caused the rule in the case of *The War Onskan*; and to bring the present case within the principles established by the court in the case of *Talbot v. Seeman*.

The general conduct of France having been changed, it is to be presumed she would have been released, with damages and costs; if not upon the principles of justice, good faith, and the law of nations, yet upon those of policy. France was at war with Great Britain; partial hostilities existed with the United States. The non-intercourse law prevented our vessels from trading with France or her dependencies; and the French West Indies could only be supplied from the Danish islands. It is not to be believed, therefore, that they would, by condemning this vessel (coming to them with those very supplies which they wanted), embarrass a trade so necessary to their very existence.

But independently of the general misconduct of France towards neu-

Having proved that the *Statira* was not liable to confiscation, on the ground of her being in the hands of an enemy, the commissary considers whether her cargo was ground of confiscation.

Upon this point he considers two questions, 1st, whether in point of law, the character of the vessel, neutral or not, should be determined by the nature of the cargo? 2d, whether the cargo consisted of contraband?

He then reviews all the laws upon this head. He shows that till the decree of the 29th Nivose, (year 6) January 18, 1798, the regulation states, "His majesty prohibits all privateers to stop and bring into the ports of the kingdom the ships of neutral powers, even though coming from or bound to the ports of the enemy, with the exception of those carrying supplies to places blockaded, invested or besieged. With regard to the ships of neutral states laden with contraband commodities for the enemy, they may be stopped and the said commodities shall be seized and confiscated, but the vessels and the residue of their cargo shall be restored, unless the said contraband commodities constituted three-fourths of the value of the cargo, in which case the ship and cargo shall be wholly confiscated. His majesty however reserves the right of revoking the privileges above granted, if the enemy do not grant a reciprocal indulgence in the course of six months from the date hereof."

The law of the 29th Nivose (year 6), overturned all this system, and enacted, "That the state of ships in regard to their being neutral or hostile, should be determined by their cargo; that accordingly every vessel found at sea, laden in whole or in part with commodities coming from England or its possessions, should be declared good prize, whoever might be owners of their articles and commodities."

The severity of this regulation the commissary condemns, but as the *Statira* was captured while it was in force, the captor was entitled to have the capture tried by it.

He examines next how the regulation applies, premising his opinion that such regulations are improperly styled laws, and they are essentially variable *pro temporibus et causis*; that they should always be tempered by wisdom and equity. He adverts to the words in whole or in part. By the whole, he says, ought to be understood a great part, according to the judicial maxim *parum pro nihilo habetur*. Upon this principle then, he is of opinion that a ship ought not to be subject to confiscation even under the law of the 29th Nivose, unless such

trals, the captors rely upon three points arising under French ordinances.

1. That the *rôle d'équipage* wants the place of nativity of the crew. But, according to the opinion of Portalis, this is not a fatal defect, nor is it, of itself, a sufficient ground for condemnation.

2. That more than one-third of the crew were enemies of France. The word *matelot*, in the ordinance of 1778, means a sailor, in contradistinction to the captain or master. Exclude the master, and there were only ten persons on board, and only three of those are pretended to be enemies; so that one-third were not enemies, within the meaning of the ordinance.

But these three pretended enemies were Americans. The hostilities which existed between France and the United States amounted at most to a partial, limited war, according to the decision of this court in the case of *Bas v. Tingy*. It was only a war against French armed force found on the high seas. It did not authorize private hostilities between the citizens of the two countries. Individuals are only enemies to each

a part of the cargo comes under the description of what is there made contraband, as ought to excite a presumption of fraud against all the rest. What that part should be is not capable of definition, but should be left to the enlightened equity and sound discretion of the judge.

The *Statira* had on board sixty barrels of turpentine and forty barrels of pitch. The captor contended that these were contraband; the captured said, that by the treaty of 1778 with the Americans, they were not enumerated as contraband.

But the commissary shows, that the Americans by the treaty were bound to admit the French to all the advantages of the most favorite nations; that having, in a subsequent treaty with England, made pitch contraband, with respect to the latter, necessarily it became contraband with regard to France.

The learned commissary, however, thinks that even upon the principle of the law of the 24th Nivose, the quantity of pitch was too small to justify confiscation.

In the next place the captor alleged, that 2911 pieces of Campeachy wood, part cargo of the *Statira*, was the produce of English possessions.

This point, however, had not been regularly ascertained, as the report on the subject was made without the captured being called as a party.

The commissary states, however, strong circumstances of suspicion on this head. The captured had not appealed against the confiscation of the cargo. The point came under the consideration of the court on the appeal of the captor, who wanted to get both ship and cargo.

The commissary therefore saw no reason for condemning the ship, which was clearly neutral; but on account of the suspicions against the character of the cargo, he thought no indemnification whatever was due to the captured.

Judgment was pronounced accordingly.

The piratical decree of the 29th Nivose (year 6), mentioned above with so much severity by Portalis, has been repealed, and things have been placed upon the footing of the regulation of 1778; that is, the French are to treat neutrals in regard to contraband in the same way in which they are treated by us; they will not allow the Americans to carry into England a commodity which the English would seize as contraband going into the ports of France.

other, in a general war. The war extended only to those objects pointed out in the acts of Congress; as to everything else, the state of the two nations was to be considered as a state of peace. It was a war only *quoad hoc*. The individuals of the two nations were always neutral to each other. A citizen of the United States could only be considered as an enemy of France, while in arms against her; the neutrality was the counterpart, or (to use a mathematical expression), the complement of the war. A citizen of the United States, peaceably navigating a neutral vessel, could not be burdened with the character of enemy.

3. The master was a Scot by birth. The ordinance cited from 1 *Code des Prises*, 303, § 6. in support of this objection, is in the alternative. The master of the vessel must be naturalized in a neutral country, or must have transferred his domicile to the neutral country, three months before the first of September in that year. Naturalization is not necessary, if there be such a transfer of the domicile; and the domicile is not necessary, if the party be naturalized. But the authority of Portalis shows that these decrees are not to be considered as laws, but *sub modo*. They are only regulations made at particular times, for particular purposes.

If the same evidence had been produced at Guadeloupe, which has been brought here (and the same would have been more easily obtained there), there can be no doubt the vessel would have been restored. It is in evidence that other vessels of Mr. Shattuck had been released. No salvage can be allowed, unless the danger was imminent, not problematical.

IV. Under all the circumstances of the case, Captain Murray acted illegally, and is liable for damages; which have been properly assessed. His subsequent conduct rendered the transaction tortious, *ab initio*. If he was justified in rescuing the vessel from the hands of the French, his subsequent detention of the vessel, and the sale of the cargo at Martinique by his own agent, without condemnation, were unauthorized acts, in violation of the rights of neutrality. The libel says nothing of the cargo; it is first mentioned in the replication. The libel only prays condemnation of the vessel, on the ground of violation of the non-intercourse law.

By law, he was bound to bring the vessel and cargo into a port of the United States for adjudication, and had no authority to sell the cargo, before condemnation. As to the pretense of her being an armed

French vessel, he ought to have sent the arms into port with the vessel, as the only evidence of their existence.

The commander of the French privateer, in his commission to the prize-master, calls her the Danish schooner *Charming Betsy*, William Wright, master. There was no evidence to impeach the credence due to the papers found on board of her, which at that time had every appearance of fairness, and which have since been incontestably proved to be genuine.

The facts stated in the *procès verbal* are, that she had no log-book; that the mate declared himself to be an American; that the flag and pendant were American; that the Danish flag had been made, during the chase, which was confirmed by the two boys, and that she had no pass from the French consul. Whatever weight might be given to these facts, if true, yet the outrageous and disorderly conduct of the crew of the privateer entirely destroys the credit of the *procès verbal*, and at best it would be only the declaration of interested plunderers.

But it is said that, by the law of nations, probable cause is a sufficient excuse; and that this law operates as the law of nations. In revenue laws, probable cause is no justification, unless it is made so by the laws themselves. This is not a war measure. If the United States were at war, it was unnecessary, because the act of trading with an enemy is itself a ground of condemnation. This law was passed because the United States were not at war, and wished to avoid it, by showing their power over the French colonies in the West Indies. It is a municipal regulation, as well suited to a state of peace as of war. It affects our own citizens only. It is no part of the law of nations. What would other nations call it, were they bound to notice it? It can give no right to search and seize neutrals. It could not affect their rights.

He who takes must take at his peril. The law only gives authority to seize vessels of the United States. If he takes the vessel of another nation, he must answer it.

As to the damages. Nothing can justify Captain Murray; but it was a mistake of the head, not of the heart. His intentions were honest and correct, but he suffered his suspicions to carry him too far. If it was an error in judgment, shall he have salvage? If an injury has been done to the innocent and unfortunate owner, shall he have no redress? The consequences to him were the same, whatever might have been the motive. The damages have been properly assessed in the district court. If damages are to be given, they ought not to be less

than the original cost of vessel and cargo, with the outfit, insurance, interest and expenses; and upon calculation, it will be found that the damages assessed do not exceed the amount of these.¹

Dallas.—It is said that Mr. Shattuck never was a citizen of the United States. What is averred and admitted need not be proved. Mr. Soderstrom, in his rejoinder, expressly admits that he was once a citizen of the United States by alleging that he had transferred his allegiance from the Government of the United States to his Danish majesty. Mr. Shattuck's burgher's brief is, at length, for the first time, produced and admitted to be made a part of the record. It bears date on the 10th of April, 1797. It may here be remarked that some of the witnesses have testified that he became a burgher in 1795. This shows how little reliance ought to be placed upon their testimony. If, then, Mr. Shattuck did expatriate himself, it was not until April, 1797. It has been conceded that a man can not expatriate himself unless it be done in a fit time, with fairness of intention, and publicity of act.

As to the fitness of the time. What was the situation of this country and France in the year 1797? In 1795, the British treaty had excited the jealousy of France. In 1796, she passed several edicts highly injurious to our commerce. Mr. Pinckney had been sent as an envoy extraordinary, and was refused. France had gone on in a long course of injury and insult, which at length roused the spirit of the nation. On the 14th of June, 1797, the act of Congress was passed, prohibiting the exportation of arms; on the 23d, the act for the defense of the ports and harbors of the United States; on the 24th, the act for raising 80,000 militia; on the 1st July, the act providing a naval armament; on the 13th of June, 1798, the first non-intercourse bill was passed, and on the 7th of July, the treaties with France were annulled. These facts show that the time when Mr. Shattuck chose to expatriate himself, was a time of approaching hostilities, and when everything indicated war.

As to the fairness of his intention. The same facts show what that intention was. It was to carry on that trade which everything tended to show would soon become criminal by the laws of war, and from the exercise of which the other citizens of the United States were about to

¹MARSHALL, Ch. J. What would have been the law as to probable cause, if there had been a public general war between France and the United States, and the vessel had been taken on suspicion of being a vessel of the United States, trading with the enemy, contrary to the laws of war? Would probable cause excuse, in such a case, if it should turn out that she was a neutral?

be interdicted. The act of Congress points to this very case. It was to prevent transactions of this nature, that the word "elsewhere" was inserted.

But why was not this burgher's brief, or a copy of it, put on board the vessel? The answer is obvious, because it would have discovered the time of expatriation, which would have increased the suspicions excited by the origin of the vessel, by the recent transfer, by the nature of the cargo, and by the character of the crew. Domicil in a neutral country gives a man only the rights of trade; it will not justify him in a violation of the laws of his country.

If, then, Mr. Shattuck could not expatriate himself, or if he has not expatriated himself, he is bound to obey the laws of the United States. A nation has a right to bind, by her laws, her own citizens residing in a foreign country; as the United States have done in the act of Congress respecting the slave-trade and in the non-intercourse law.

The question, whether the vessel was capable of annoying our commerce, depends upon matter of fact, of which the court will judge. The number of men was sufficient; the testimony respecting the cutlasses is supported by the nature of the transaction, and by the usage in such cases. Some arms were necessary to prevent Captain Wright and his boys from rising and rescuing the vessel. Circumstances are as strong as oaths, and are generally more satisfactory. The vessel, having port-holes, was constructed for war, and in an hour after her arrival at Guadeloupe, might have been completely equipped. Upon the principles of the case of *Talbot v. Seeman*, Captain Murray was bound to guard against this, and he would have been culpable, if he had suffered her to escape.

But it is said that she was not in danger of condemnation by the French, because France had ceased from her violation of the laws of nations, because she had repealed the obnoxious *arrêt* of 18th January, 1798, and because one-third of the crew were not her enemies. Admitting all this, yet if one ground of condemnation remained, she would have been condemned. The vessel was transferred from an enemy to a neutral, during the heat of hostilities. This alone was a sufficient ground of condemnation, under the ordinance already cited from 1 *Code des Prises*, 304, art 7. In the case of *Talbot v. Seeman*, the ground of salvage was that the vessel was liable to condemnation under a French *arrêt*. And that the courts of France were bound to carry the *arrêt* into effect.

The conduct of Captain Murray was not illegal. He was bound, by law, as well as by his instructions, to take the vessel out of the hands of the French. It was with the consent, if not at the request, of Captain Wright; and it was in itself an act of humanity. His conduct was fair, upright and honorable in the whole transaction. He offered to take security for the vessel and cargo. The cargo was perishable: if it had been brought to the United States, it would not have been in a merchantable condition; or if it had been, it would not have sold so high here (being chiefly articles of American produce) as at Martinique. The sale was fair, and the proceeds brought to the United States to wait the event of the trial.

Probable cause is a thing of maritime jurisdiction; and authorities in point may be found, even at common law. If it is a municipal regulation, it is one which affects the whole world. It is engrafted upon the law of nations. It is municipal only as it emanates from the municipal authority of the nation. But the whole world is bound to notice a law which affects the interests of all nations in the world.

As to the damages. The principles upon which they are assessed do not appear from the report of the assessors, but the probability is that they were founded upon the estimates of the probable profits of the voyage, as stated in the testimony of some of the witnesses. In a case of this kind, where the purity of intention is admitted, it can never be proper to give speculative or vindictive damages.¹

Martin, in reply.—1. As to the national character of Shattuck. He was born before the revolution; probably, in 1773 or 1774; at least twenty-one years before April 10th, 1797, which will bring it before the Declaration of Independence. In *Duane's Case*, it was decided that even if it had been proved, that he was born in New York, yet his birth being before the revolution, and having been carried to Ireland during his minority, he was an alien.

The rejoinder of Mr. Soderstrom does not admit the fact that Shattuck was a citizen of the United States; but if it did, it is coupled with an express allegation that he had duly expatriated himself; and if part is taken, the whole must be taken. The words of the rejoinder are, "and this party expressly alleges and avers that the said Jared Shattuck, at the several times and periods above mentioned, and long before, and in the intermediate times which elapsed between the said several times

¹In answer to an inquiry by the Chief Justice for authorities to support the position that probable cause is always a justification in maritime cases, Mr. DALLAS referred generally to Browne's Civil and Admiralty Law, and to the decisions of Sir Wm. Scott.

or periods, had been, then was, ever since hath been, and now is, a subject of his majesty the king of Denmark, owing allegiance to his said majesty, and to no other prince, potentate, state or sovereignty whatever; and that he, the said Jared Shattuck, had, long before his said purchase of the said schooner, duly expatriated himself from the dominions of the United States, to those of his said majesty; and transferred his allegiance and subjection from the said United States and their government to his said majesty and his government." The whole purport of which is, that if he was ever a citizen of the United States, he had expatriated himself.

Even if it was an admission of the fact, yet it could not prejudice Mr. Shattuck, as the rejoinder is by Mr. Soderstrom, in character of consul of Denmark, and as the representative of the nation. If he was born before the revolution, he never owed natural allegiance to the United States; and if he remained here, after the revolution, during part of his minority, he owed only a temporary and local allegiance; during the existence of which, if he had taken up arms against the United States, he would have been guilty of treason. But that allegiance continued only while he was a resident of the country; he had a right to transfer such temporary allegiance whenever he pleased. Foster's Cr. Law, 183, 185.

That he acted with a fair and honest intention is proved by his *bona fide* residence and domicile for ten or eleven years. 2 Browne's Civil and Admiralty Law, 328. The navigation act of Great Britain is a municipal law, and yet a *bona fide* domicile and residence of foreigners, were held sufficient to bring the persons within its provisions. *Scot qui tam*, v. *Schwartz*, Comyns, 677.¹

¹The case of *Scot v. Schwartz*, was an information against the Russian ship *The Constant*, because the master and three-fourths of the mariners were not of that country or place, according to the Statute of 12. Car. 2. C. 18, § 8. The ship was built in Russia, and the cargo was the product of that country. The master was born out of the Russian dominions, but in 1733 was admitted, and ever since continued a burgher of Riga; and had been a resident there, when not engaged in foreign voyages, and traded from thence, nine years before the seizure. There were only eleven mariners on board, of whom four were born in Russia; Morgan a fifth was born in Ireland and there bound apprentice to the master, and as such went with him to Riga, and for three or four years before the seizure, served on board the same ship and sailed therein from Riga, on this and former voyages. The other six were born out of the dominions of Russia, but Stephen Hanson, one of them, had resided at Riga eight years next before the seizure—Hans Yasper five years—Rein Steingrave four years, and Derrick Andrews, the cook, seven years, and these four, during those years had sailed from Riga in that and other vessels.

It was adjudged that these people were of that country or place, within the meaning of the Statute, and the vessel properly manned and navigated.

But a stronger case than that is found in 1 Bos. & Pul. 430 (*Marratt v. Wilson*), in the exchequer chamber, on a writ of error from the king's bench. In that case, a natural-born British subject, naturalized in the United States, since the peace, was adjudged to be a citizen of the United States, within the treaty and navigation acts of Great Britain, so as to carry on a direct trade from England to the British East Indies. The opinion of EYRE, Ch. J., beginning in p. 439, is very strong in our favor.

There is no probability that the vessel would have been condemned at Guadeloupe. Mr. Shattuck, and his course of trade, were well known there, and they had already released some of his vessels. Another reason is that Bonaparte was at that time negotiating with the northern powers of Europe, to form a coalition to support the principle that free ships should make free goods; and he would have succeeded but for the able negotiations of Lord Nelson at Copenhagen.

In *Park on Insurance*, 363, it is said, "If the ground of decision appear to be, not on the want of neutrality, but upon a foreign ordinance manifestly unjust, and contrary to the law of nations, and the insured has only infringed such a partial law; as the condemnation did not proceed on the point of neutrality, it can not apply to the warranty so as to discharge the insurer." And in support of this position he cites the case of *Mayne v. Walter*.

There is no ordinance of France which, upon the principles established in the case of *The Pegou*, would have been a sufficient ground of condemnation. The circumstances required by those ordinances are only evidence of neutrality, which is always a question of *bona fides*. A condemnation upon either of these ordinances alone would have been contrary to the law of nations; but if they are considered as only requiring certain circumstances, tending to establish the fact of neutrality, they are perfectly consistent with that law. This is the light in which they have been considered by Portalis. The French have never considered our vessels as the vessels of an enemy. Our vessels have not been condemned by them as enemy property; but their sentences have always been grounded upon a pretended violation of some particular ordinance of France. Hence, it appears that they would not have considered an American vessel, sold to a Dane, as an enemy's vessel transferred to a neutral during a state of war.

But the claim of salvage is an afterthought. It was not necessary to bring her to the United States to obtain salvage. Salvage is a ques-

tion of the law of nations, and may be decided by the courts of any civilized nation. Instead of rendering a service, he has done a tenfold injury. Captain Murray's intentions were undoubtedly correct and honorable, and we do not wish vindictive damages; but Mr. Shattuck will be a loser, even if he gains his cause, and recovers the damages already assessed. Probable cause can not justify the taking and bringing in a neutral; but it may prevent vindictive damages.

February 22d, 1804. MARSHALL, Ch. J., delivered the opinion of the court.—*The Charming Betsy* was an American-built vessel, belonging to citizens of the United States, and sailed from Baltimore, under the name of *The Jane*, on the 10th of April, 1800, with a cargo of flour for St. Bartholomew; she was sent out for the purpose of being sold. The cargo was disposed of at St. Bartholomew; but finding it impossible to sell the vessel at that place, the master proceeded with her to the island of St. Thomas, where she was disposed of to Jared Shattuck, who changed her name to that of *The Charming Betsy*, and having put on board her a cargo consisting of American produce, cleared her out, as a Danish vessel, for the island of Guadeloupe.

On her voyage she was captured by a French privateer, and eight hands were put on board her for the purpose of taking her into Guadeloupe as a prize. She was afterwards recaptured by Captain Murray, commander of the *Constellation* frigate, and carried into Martinique. It appears that the master of *The Charming Betsy* was willing to be taken into that island; but when there, he claimed to have his vessel and cargo restored, as being the property of Jared Shattuck, a Danish burgher.

Jared Shattuck was born in the United States, but had removed to the island of St. Thomas, while an infant, and was proved to have resided there ever since the year 1789 or 1790. He had been accustomed to carry on trade as a Danish subject; had married a wife and acquired real property in the island, and also taken the oath of allegiance to the crown of Denmark in 1797.

Considering him as an American citizen, who was violating the law prohibiting all intercourse between the United States and France, or its dependencies, or the sale of the vessel as a mere cover to evade that law, Captain Murray sold the cargo of *The Charming Betsy*, which consisted of American produce, in Martinique, and brought the vessel into the port of Philadelphia, where she was libelled under what is

termed the non-intercourse law. The vessel and cargo were claimed by the consul of Denmark as being the *bona fide* property of a Danish subject.

This cause came on to be heard before the judge for the district of Pennsylvania, who declared the seizure to be illegal, and that the vessel ought to be restored, and the proceeds of the cargo paid to the claimant, or his lawful agent, together with costs and such damages as should be assessed by the clerk of the court, who was directed to inquire into and report the amount thereof; for which purpose he was also directed to associate with himself two intelligent merchants of the district, and duly inquire what damage Jared Shattuck had sustained by reason of the premises. If they should be of opinion that the officers and crew of the *Constellation* had conferred any benefit on the owners of *The Charming Betsy*, by rescuing her out of the hands of the French captors, they were, in the adjustment, to allow reasonable compensation for the service.

In pursuance of this order, the clerk associated with himself two merchants, and reported that having examined the proofs and vouchers exhibited in the cause, they were of opinion that the owner of the vessel and cargo had sustained damage to the amount of \$20,594.16, from which is to be deducted the sum of \$4,363.86, the amount of moneys paid into court arising from the sales of the cargo, and the further sum of \$1,300, being the residue of the proceeds of the said sales remaining, to be brought into court, \$5,663.86. This estimate is exclusive of the value of the vessel, which was fixed at \$3,000. To this report an account is annexed, in which the damages, without particularizing the items on which the estimate was formed, were stated at \$14,930.30.

No exceptions having been taken to this report, it was confirmed, and, by the final sentence of the court, Captain Murray was ordered to pay the amount thereof. From this decree an appeal was prayed to the circuit court, where the decree was affirmed so far as it directed restitution of the vessel, and payment to the claimant of the net proceeds of the sale of the cargo in Martinique, and reversed for the residue. From this decree, each party has appealed to this court.

It is contended on the part of the captors, in substance, 1st. That the vessel *Charming Betsy* and cargo are confiscable under the laws of the United States. If not so, 2d. That the captors are entitled to salvage. If this is against them, 3d. That they ought to be excused from damages, because there was probable cause for seizing the vessel and bringing her into port.

1. Is *The Charming Betsy* subject to seizure and condemnation for having violated a law of the United States? The libel claims this forfeiture, under the act passed in February, 1800, further to suspend the commercial intercourse between the United States and France, and the dependencies thereof. That act declares, "that all commercial intercourse," etc. It has been very properly observed, in argument, that the building of vessels in the United States for sale to neutrals, in the islands is, during war, a profitable business, which Congress can not be intended to have prohibited, unless that intent be manifested by express words, or a very plain and necessary implication. It has also been observed that an act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains, and consequently can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country. These principles are believed to be correct, and they ought to be kept in view, in construing the act now under consideration.

The first sentence of the act which describes the persons whose commercial intercourse with France, or her dependencies, is to be prohibited, names any person or persons resident within the United States, or under their protection. Commerce carried on by persons within this description is declared to be illicit. From persons the act proceeds to things, and declares explicitly the cases in which the vessels employed in this illicit commerce shall be forfeited. Any vessel owned, hired or employed, wholly or in part, by any person residing within the United States, or by any citizen thereof, residing elsewhere, which shall perform certain acts recited in the law, becomes liable to forfeiture. It seems to the court to be a correct construction of these words to say that the vessel must be of this description, not at the time of the passage of the law, but at the time when the act of forfeiture shall be committed.

The cases of forfeiture are, first, a vessel of the description mentioned which shall be voluntarily carried, or shall be destined, or permitted to proceed to any port within the French Republic. She must, when carried, or destined, or permitted to proceed to such port, be a vessel within the description of the act. The second class of cases are those where vessels shall be sold, bartered, intrusted, or transferred, for the purpose that they may proceed to such port or place. This part of the section makes the crime of the sale dependent on the purpose

for which it was made. If it was intended that any American vessel, sold to a neutral, should, in the possession of that neutral, be liable to the commercial disabilities imposed on her while she belonged to citizens of the United States, such extraordinary intent ought to have been plainly expressed; and if it was designed to prohibit the sale of American vessels to neutrals, the words placing the forfeiture on the intent with which the sale was made ought not to have been inserted. The third class of cases are those vessels which shall be employed in any traffic by or for any person resident within the territories of the French Republic, or any of its dependencies. In these cases, too, the vessels must be within the description of the act, at the time the fact producing the forfeiture was committed.

The Jane having been completely transferred, in the island of St. Thomas, by a *bona fide* sale, to Jared Shattuck, and the forfeiture alleged to have accrued on a fact subsequent to that transfer, the liability of the vessel to forfeiture must depend on the inquiry, whether the purchaser was within the description of the act.

Jared Shattuck having been born within the United States, and not being proved to have expatriated himself, according to any form prescribed by law, is said to remain a citizen, entitled to the benefit, and subject to the disabilities imposed upon American citizens; and therefore to come expressly within the description of the act which comprehends American citizens residing elsewhere.

Whether a person born within the United States, or becoming a citizen according to the established laws of the country, can divest himself absolutely of that character, otherwise than in such manner as may be prescribed by law, is a question which it is not necessary at present to decide. The cases cited at bar, and the arguments drawn from the general conduct of the United States on this interesting subject, seem completely to establish the principle, that an American citizen may acquire, in a foreign country, the commercial privileges attached to his domicil, and be exempted from the operation of an act expressed in such general terms as that now under consideration. Indeed, the very expressions of the act would seem to exclude a person under the circumstances of Jared Shattuck. He is not a person under the protection of the United States. The American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of his own government; and if, without

the violation of any municipal law, he should be oppressed unjustly, he would have a right to claim that protection, and the interposition of the American Government in his favor, would be considered as a justifiable interposition. But his situation is completely changed, where, by his own act, he has made himself the subject of a foreign power. Although this act may not be sufficient to rescue him from punishment for any crime committed against the United States, a point not intended to be decided, yet it certainly places him out of the protection of the United States, while within the territory of the sovereign to whom he has sworn allegiance, and, consequently, takes him out of the description of the act.

It is, therefore, the opinion of the court that *The Charming Betsy*, with her cargo, being at the time of her recapture the *bona fide* property of a Danish burgher, is not forfeitable, in consequence of her being employed in carrying on trade and commerce with a French island.

2. The vessel not being liable to confiscation, the court is brought to the second question, which is—Are the recaptors entitled to salvage?

In the case of *The Amelia* (1 Cr. 1), it was decided, on mature consideration, that a neutral armed vessel, in possession of the French, might, in the then existing state of hostilities between the two nations, be lawfully captured; and if there were well-founded reasons for the opinion, that she was in imminent hazard of being condemned as a prize, the recaptors would be entitled to salvage. The court is well satisfied with the decision given in that case, and considers it as a precedent not to be departed from in other cases attended with circumstances substantially similar to those of *The Amelia*. One of these circumstances is, that the vessel should be in a condition to annoy American commerce.

The degree of arming which should bring a vessel within this description has not been ascertained, and perhaps it would be difficult precisely to mark the limits, the passing of which would bring a captured vessel within the description of the acts of Congress on this subject. But although there may be difficulty in some cases, there appears to be none in this. According to the testimony of the case, there was on board but one musket, a few ounces of powder and a few balls. The testimony respecting the cutlasses is not considered, as showing that they were in the vessel at the time of her recapture. The capacity of this vessel for offense appears not sufficient to warrant the capture of her as an armed vessel. Neither is it proved to the satisfaction of the

court, that *The Charming Betsy* was in such imminent hazard of being condemned, as to entitle the recaptors to salvage.

It remains to inquire whether there was in this case such probable cause for sending in *The Charming Betsy* for adjudication, as will justify Captain Murray for having broken up her voyage, and excuse him from the damages sustained thereby. To effect this, there must have been substantial reason for believing her to have been at the time, wholly or in part, an American vessel, within the description of the act; or hired or employed by Americans; or sold, bartered or trusted for the purpose of carrying on trade to some port or place belonging to the French Republic.

The circumstances relied upon are, principally, 1st. The *procès verbal* of the French captors. 2d. That she was an American-built vessel. 3d. That the sale was recent. 4th. That the master was a Scotchman, and the muster-roll showed that the crew were not Danes. 5th. The general practice in the Danish islands of covering neutral property.

The *procès verbal* contains an assertion that the mate declared that he was an American, and that their flag had been American, and had been changed, during the cruise, to Danish, which declaration was confirmed by several of the crew. If the mate had really been an American, the vessel would not, on that account, have been liable to forfeiture, nor would that fact have furnished any conclusive testimony of the character of the vessel. The *procès verbal*, however, ought for several reasons to have been suspected. The general conduct of the French West India cruisers, and the very circumstance of declaring that the Danish colors were made during the chase, were sufficient to destroy the credibility of the *procès verbal*. Captain Murray ought not to have believed that an American vessel, trading to a French port, in the assumed character of a Danish bottom, would have been without Danish colors.

That she was an American vessel, and that the sale was recent, can not be admitted to furnish just cause of suspicion, unless the sale of American-built vessels had been an illegal or an unusual act. That the master was a Scotchman, and that the names of the crew were not generally Danish, are circumstances of small import, when it is recollected that a very great proportion of the inhabitants of St. Thomas are British and Americans. The practice of covering American property in the islands might and would justify Captain Murray in giving to other causes of suspicion more weight than they would otherwise

be entitled to, but can not be itself a motive for seizure. If it was, no neutral vessel could escape, for this ground of suspicion would be applicable to them all.

These causes of suspicion, taken together, ought not to have been deemed sufficient to counterbalance the evidences of fairness with which they were opposed. The ship's papers appear to have been perfectly correct, and the information of the master, uncontradicted by those belonging to the vessel who were taken with him, corroborated their verity. No circumstance existed which ought to have discredited them. That a certified copy of Shattuck's oath, as a Danish subject, was not on board, is immaterial, because, being apparently on all the papers a burgher, and it being unknown that he was born in the United States, the question whether he had ceased to be a citizen of the United States could not present itself.

Nor was it material, that the power given by the owners of the vessel to their master to sell her in the West Indies, was not exhibited. It certainly was not necessary to exhibit the instructions under which the vessel was acquired, when the fact of acquisition was fully proved by the documents on board, and by other testimony.

Although there does not appear to have been such cause to suspect *The Charming Betsy* and her cargo to have been American, as would justify Captain Murray in bringing her in for adjudication, yet many other circumstances combine with the fairness of his character to produce a conviction that he acted upon correct motives from a sense of duty; for which reason this hard case ought not to be rendered still more so by a decision in any respect oppressive.

His orders were such as might well have induced him to consider this as an armed vessel within the law, sailing under authority from the French Republic; and such, too, as might well have induced him to trust to very light suspicions respecting the real character of a vessel appearing to belong to one of the neutral islands. A public officer, intrusted on the high seas to perform a duty deemed necessary by his country, and executing according to the best of his judgment the orders he has received, if he is a victim of any mistake he commits, ought certainly never to be assessed with vindictive or speculative damages. It is not only the duty of the court to relieve him from such, when they plainly appear to have been imposed on him, but no sentence against him ought to be affirmed, where, from the nature of the proceedings, the whole case appears upon the record, unless those pro-

ceedings are such as to show on what the decree has been founded, and to support that decree.

In the case at bar, damages are assessed as they would be by the verdict of the jury, without any specification of items, which can show how the account was made up, or on what principles the sum given as damages was assessed. This mode of proceeding would not be approved of if it was even probable, from the testimony contained in the record, that the sum reported by the commissioners of the district court was really the sum due. The district court ought not to have been satisfied with a report, giving a gross sum in damages, unaccompanied by any explanation of the principles on which that sum was given. It is true, Captain Murray ought to have excepted to this report. His not having done so, however, does not cure an error apparent upon it, and the omission to show how the damages which were given had accrued, so as to enable the judge to decide on the propriety of the assessment of his commissioners, is such an error.

Although the court would in any case disapprove of this mode of proceeding, yet, in order to save the parties the cost of further prosecuting this business in the circuit court, the error which has been stated might have been passed over, had it not appeared probable that the sum for which the decree of the district court was rendered is really greater than it ought to have been, according to the principles by which the claim should be adjusted.

This court, therefore, is not satisfied with either the decree of the district or circuit court, and has directed me to report the following decree:

DECREE OF THE COURT.—This cause came on to be heard, on the transcript of the record of the circuit court, and was argued by counsel; on consideration whereof, it is adjudged, ordered and decreed as follows, to wit: That the decree of the circuit court, so far as it affirms the decree of the district court, which directed restitution of the vessel, and payment to the claimant of the net proceeds of the sale of the cargo in Martinique, deducting the costs and charges there, according to amount exhibited by Captain Murray's agent, being one of the exhibits in the cause, and so far as it directs the parties to bear their own costs, be affirmed; and that the residue of the said decree, whereby the claim of the owner to damages for the seizure and detention of his vessel was rejected, be reversed.

And the court, proceeding to give such further decree as the circuit court ought to have given, doth further adjudge, order and decree, that so much of the decree of the district court as adjudges the libellant to pay costs and damages, be affirmed; but that the residue thereof, by which the said damages are estimated at \$20,594.16, and by which the libellant was directed to pay that sum, be reversed and annulled. And this court does further order and decree, that the cause be remanded to the circuit court, with directions to refer it to commissioners, to ascertain the damages sustained by the claimants, in consequence of the refusal of the libellant to restore the vessel and cargo at Martinique, and in consequence of his sending her into a port of the United States for adjudication; and that the said commissioners be instructed to take the actual prime cost of the cargo and vessel, with interest thereon, including the insurance actually paid, and such expenses as were necessarily sustained in consequence of bringing the vessel into the United States, as the standard by which the damages ought to be measured. Each party to pay his own costs in this court, and in the circuit court. All which is ordered and decreed accordingly.¹

LITTLE, ET AL. v. BARREME, ET AL. (*FLYING FISH*)²

Responsibility of naval officer for illegal seizure.—Probable cause.

The commander of a ship of war of the United States, in obeying his instructions from the President of the United States, acts at his peril: if those instructions are not strictly warranted by law, he is answerable in damages to any person injured by their execution.

The act of the 9th of February, 1799, did not authorize the seizure upon the high seas of any vessels sailing from a French port; and the orders of the President of the United States could not justify such a seizure.

Quaere? Whether probable cause will excuse from damages?

Appeal from the Circuit Court for the District of Massachusetts.

On the 2d of December, 1799, the Danish brigantine *Flying Fish* was captured, near the island of Hispaniola, by the United States frigates *Boston* and *General Green*, upon suspicion of violating the Act of Congress, usually termed the non-intercourse law, passed on the 9th of February, 1799 (1 U. S. Stat. 613), by the 1st section of

¹Captain Murray was reimbursed his damages, interest and charges, out of the Treasury of the United States, by an act of Congress, January 31, 1805.

²2 Cranch, 170.

which it is enacted, "That from and after the first day of March next, no ship or vessel owned, hired or employed, wholly or in part, by any person resident within the United States, and which shall depart therefrom, shall be allowed to proceed directly, or from any intermediate port or place, to any port or place within the territory of the French Republic, or the dependencies thereof, or to any place in the West Indies, or elsewhere, under the acknowledged government of France, or shall be employed in any traffic or commerce with or for any person, resident within the jurisdiction or under the authority of the French Republic. And if any ship or vessel, in any voyage thereafter commencing, and before her return within the United States, shall be voluntarily carried or suffered to proceed to any French port or place as aforesaid, or shall be employed as aforesaid, contrary to the intent hereof, every such ship or vessel, together with her cargo, shall be forfeited; and shall accrue, the one-half to the use of the United States, and the other half to the use of any person or persons, citizens of the United States, who will inform and prosecute for the same; and shall be liable to be seized, and may be prosecuted and condemned, in any circuit or district court of the United States, which shall be holden within or for the district where the seizure shall be made."

And by the 5th section, it is enacted, "That it shall be lawful for the President of the United States to give instructions to the commanders of the public armed ships of the United States, to stop and examine any ship or vessel of the United States, on the high seas, which there may be reason to suspect to be engaged in any traffic or commerce contrary to the true tenor hereof; and if, upon examination, it shall appear that such ship or vessel is bound or sailing to any port or place within the territory of the French Republic, or her dependencies, contrary to the intent of this act, it shall be the duty of the commander of such public armed vessel, to seize every such ship or vessel engaged in such illicit commerce, and send the same to the nearest port in the United States; and every such ship or vessel, thus bound or sailing to any such port or place, shall, upon due proof thereof, be liable to the like penalties and forfeitures as are provided in and by the first section of this act."

The instructions given in consequence of this section, bear date the 12th of March, 1799, and are as follows:

SIR:—Herewith you will receive an Act of Congress further to suspend the commercial intercourse between the United States

and France, and the dependencies thereof, the whole of which requires your attention. But it is the command of the President, that you consider particularly the fifth section as part of your instructions, and govern yourself accordingly. A proper discharge of the important duties enjoined on you, arising out of this act, will require the exercise of a sound and impartial judgment. You are not only to do all that in you lies, to prevent all intercourse, whether direct or circuitous, between the ports of the United States and those of France and her dependencies, in cases where the vessels or cargoes are apparently, as well as really, American, and protected by American papers only; but you are to be vigilant that vessels or cargoes really American, but covered by Danish or other foreign papers, and bound to or from French ports, do not escape you.

Whenever, on just suspicion, you send a vessel into port to be dealt with according to the afore-mentioned law, besides sending with her all her papers, send all the evidence you can obtain to support your suspicions, and effect her condemnation. At the same time that you are thus attentive to fulfill the objects of the law, you are to be extremely careful not to harass or injure the trade of foreign nations with whom we are at peace, nor the fair trade of our own citizens.

In the district court of Massachusetts, the vessel and cargo were ordered to be restored, without damages or costs. Upon the question of damages, the Honorable Judge Lowell delivered the following opinion:

This libel is founded on the statutes of the United States, made to suspend the commercial intercourse between the United States and France, and the dependencies thereof. The libellants not having produced sufficient proof to bring this vessel and cargo so far within the provisions of these statutes as to incur a forfeiture thereof, the same has been decreed to be delivered to the claimants. The question remaining to be decided is, whether the claimants are entitled to damages, which they suggest to have arisen to them, or those for whom they claim, by the capture and detention.

The facts which appear and are material to this question are, that the vessel was owned, and her cargo, by Samuel Goodman, a Prussian by birth, but now an inhabitant of the Danish island of St. Thomas; that the master was born in, and is now of, the same island, but for several years had been employed in vessels of citizens of the United States, and sailed out of our ports; that he speaks our language perfectly, in the accent of an American, and has the appearance of being one. The mate is a citizen of the

United States, born here, and having always continued such. The rest of the seamen are Englishmen, Portuguese and negroes: the supercargo, a Frenchman. The vessel had carried a cargo of provisions and dry goods from St. Thomas to Jeremie, and was returning thither, loaded with coffee, when captured. That during the chase by the American frigates, the master threw overboard the log-book, and certain other papers. That there was on board a protest signed by the master, supercargo and several seamen, in which they declared that the vessel had been bound from St. Thomas to Port au Prince, and was compelled by Rigaud's vessels to go into Jeremie, which was false and totally unfounded; and that, after the capture, the master inquired of his seamen whether they would stand by him respecting this pretense. That the statutes of the United States prohibiting intercourse with France and its dependencies had been long before known at St. Thomas, and that it had been since a common practice there, to cover American property for the purpose of eluding the law.

If a war of a common nature had existed between the United States and France, no question would be made but the false papers found on board, the destruction of the log-book and other papers, would be a sufficient excuse for the capture, detention and consequent damages. It is only to be considered whether the same principles, as they respect neutrals, are to be applied to this case?

My mind has found much difficulty in settling this question. It is one altogether new to me, and arises from the peculiar imperfect war existing at this time between the United States and France. I have embraced an opinion with much diffidence, and am happy that it may be revised in the superior courts of the United States.

On what principles is the right of belligerent powers to examine neutral vessels, and the duty of neutrals to furnish their ships with proper papers, and to avoid such conduct as may give cause to suspect they are other than they pretend to be, founded? Do they not necessarily result from a compromise of their respective rights in a state of war? Neither of the belligerent powers have an original and perfect right to capture the property of neutrals, but they have a right, unless restrained by treaty, however disguised or covered by the aid of neutrals.¹ It is a breach of neutrality to attempt to defeat this right. The practice of nations, therefore, for many ages, has been on the one hand to exercise and on the other to prevent this examination, and to establish a principle that neutral vessels shall be furnished with the usual

¹It is believed, that there has been an error in copying this passage. It is, however, printed *verbatim* from the transcript of the record. The words to be supplied probably are, "to search for and seize the property of their enemies," to be inserted after the word "treaty."

documents to prove their neutral state; shall destroy none of their papers, nor shall carry false papers, under the hazard of being exposed to every inconvenience resulting from capture, examination and detention, except the eventual condemnation of the property; and even this, by some writers, has been held to be lawful, and enforced by some great maritime powers. Every maritime nation must be involved in the war, on the side of one or the other of the belligerent powers, but from the establishment of these principles. It is not the edicts, statutes or regulations of any particular nation which confer these rights, or impose these duties. They are the result of common practice, long existing, often recognized, and founded on pacific principles. Whenever a state of war exists, these rights and duties exist.

It does not appear to me to be material, what is the nature of the war, general or limited. Nothing can be required of neutrals but to avoid duplicity. Sufficient notice to neutrals of the existing state of hostilities is all that is necessary, to attach to them the duties, and to belligerent nations, the rights, resulting from a state of war. This notice is given in different ways, by proclamations, heralds, statutes published, and even by the mere existence of hostilities for a length of time. As the island of St. Thomas, being a dependency of a neutral nation, situated near the dependencies of the belligerent power with whom the United States had prohibited intercourse, and having had long and full knowledge of the state of things, its inhabitants were, as I conceive, bound not to interfere or attempt to defeat the measures taken by our government, in their limited war. We find, however, that these attempts have been frequent; that American vessels have, in many instances, been covered in that island, and the trade which our government has interdicted has been thus carried on. It behooved, then, those of its inhabitants who would avoid the inconveniences of restraint to act with openness, and avoid fraud and its appearances.

This construction of the state in which the United States are (although I am of opinion that, abstractedly from other considerations, it would give them the rights of belligerent powers), places the neutral powers in no new predicament, nor imposes the necessity of any new documents, or other conduct than they were obliged to from the preexisting state of war between most of the great naval powers. On the whole, I am of opinion that no damages are to be paid the claimants for the capture and detention, and do so decree, and that each party bear their own costs.

From this decree, the claimants appealed to the circuit court, where it was reversed, and \$8,504 damages were given. The following is the decree of the circuit court:

This court having fully heard the parties on the said appeal, finds the facts stated in the said decree to be true, and that the said Little had instructions from the President of the United States, on which the action in the said libel is founded, a copy of which instructions is on file. And it further appearing that the said brigantine and her cargo were Danish, and neutral property, and that the said George Little knew that the said brig, at the time of the said capture, was bound and sailing from Jeremie to St. Thomas, a Danish and neutral port, and not to any French port; this court is of opinion that although Captain Little had a right to stop and examine the said brig, in case of suspecting her to be engaged in any commerce contrary to the act of the 9th of February, 1799, yet that he was not warranted by law to capture and send her to a port of the United States. That it was at his risk and peril, if the property was neutral; and that a probable cause to suspect the vessel and cargo American, will not, in such case, excuse a capture and sending to port. It is, therefore, considered, adjudged and decreed by this court, that the said decree respecting damages and costs be, and it is hereby reversed, and that the said claimants recover their damages and costs.

The damages being assessed by assessors appointed by the court, a final sentence was pronounced, from which the captors appealed to this court.

The cause was argued at December term, 1801, by *Dexter*, for the appellants, and by *Martin* and *Mason*, for the claimants.

February 27th, MARSHALL, Ch. J., now delivered the opinion of the court.—The *Flying Fish*, a Danish vessel, having on board Danish and neutral property, was captured on the 2d of December, 1799, on a voyage from Jeremie to St. Thomas, by the United States frigate *Boston*, commanded by Captain Little, and brought into the port of Boston, where she was libelled as an American vessel that had violated the non-intercourse law. The judge before whom the cause was tried directed a restoration of the vessel and cargo, as neutral property, but refused to award damages for the capture and detention, because, in his opinion, there was probable cause to suspect the vessel to be American. On an appeal to the circuit court, this sentence was reversed, because the *Flying Fish* was on a voyage from, not to, a French port, and was, therefore, had she even been an American vessel, not liable to capture on the high seas.

During the hostilities between the United States and France, an act for the suspension of all intercourse between the two nations was

annually passed. That under which the *Flying Fish* was condemned, declared every vessel owned, hired or employed, wholly or in part, by an American, which should be employed in any traffic or commerce with or for any person resident within the jurisdiction, or under the authority of the French Republic, to be forfeited, together with her cargo; the one-half to accrue to the United States, and the other to any person or persons, citizens of the United States, who will inform and prosecute for the same. The 5th section of this act authorizes the President of the United States to instruct the commanders of armed vessels "to stop and examine any ship or vessel of the United States, on the high seas, which there may be reason to suspect to be engaged in any traffic or commerce contrary to the true tenor of the act, and if, upon examination, it should appear that such ship or vessel is bound or sailing to any port or place within the territory of the French Republic or her dependencies, it is rendered lawful to seize such vessel and send her into the United States for adjudication.

It is by no means clear that the President of the United States, whose high duty it is to "take care that the laws be faithfully executed," and who is commander-in-chief of the armies and navies of the United States, might not, without any special authority for that purpose, in the then existing state of things, have empowered the officers commanding the armed vessels of the United States, to seize and send into port for adjudication, American vessels which were forfeited, by being engaged in this illicit commerce. But when it is observed that the general clause of the first section of the act which declares that "such vessels may be seized, and may be prosecuted in any district or circuit court, which shall be holden within or for the district where the seizure shall be made," obviously contemplates a seizure within the United States; and that the 5th section gives a special authority to seize on the high seas, and limits that authority to the seizure of vessels bound, or sailing to a French port, the legislature seem to have prescribed that the manner in which this law shall be carried into execution was to exclude a seizure of any vessel not bound to a French port. Of consequence, however strong the circumstances might be, which induced Captain Little to suspect the *Flying Fish* to be an American vessel, they could not excuse the detention of her, since he would not have been authorized to detain her, had she been really American.

It was so obvious, that if only vessels sailing to a French port could

be seized on the high seas, that the law would be very often evaded, that this Act of Congress appears to have received a different construction from the executive of the United States; a construction much better calculated to give it effect. A copy of this act was transmitted by the secretary of the navy, to the captains of the armed vessels, who were ordered to consider the 5th section as a part of their instructions. The same letter contained the following clause:

A proper discharge of the important duties enjoined on you, arising out of this act, will require the exercise of a sound and an impartial judgment. You are not only to do all that in you lies to prevent all intercourse, whether direct or circuitous, between the ports of the United States and those of France or her dependencies, where the vessels are apparently as well as really American, and protected by American papers only, but you are to be vigilant that vessels or cargoes, really American, but covered by Danish or other foreign papers, and bound to or from French ports, do not escape you.

These orders, given by the executive, under the construction of the Act of Congress made by the department to which its execution was assigned, enjoin the seizure of American vessels sailing from a French port. Is the officer who obeys them liable for damages sustained by this misconstruction of the act, or will his orders excuse him? If his instructions afford him no protection, then the law must take its course, and he must pay such damages as are legally awarded against him; if they excuse an act, not otherwise excusable, it would then be necessary to inquire, whether this is a case in which the probable cause which existed to induce a suspicion that the vessel was American, would excuse the captor from damages when the vessel appeared in fact to be neutral?

I confess, the first bias of my mind was very strong in favor of the opinion, that though the instructions of the executive could not give a right, they might yet excuse from damages. I was much inclined to think that a distinction ought to be taken between acts of civil and those of military officers; and between proceedings within the body of the country and those on the high seas. That implicit obedience which military men usually pay to the orders of their superiors, which indeed is indispensably necessary to every military system, appeared to me strongly to imply the principle, that those orders, if not to perform a prohibited act, ought to justify the person whose general duty

it is to obey them, and who is placed by the laws of his country in a situation which, in general, requires that he should obey them. I was strongly inclined to think that where, in consequence of orders from the legitimate authority, a vessel is seized with pure intention, the claim of the injured party for damages would be against that government from which the orders proceeded, and would be a proper subject for negotiation. But I have been convinced that I was mistaken, and I have receded from this first opinion. I acquiesce in that of my brethren, which is that the instructions can not change the nature of the transaction, nor legalize an act which, without those instructions, would have been a plain trespass.

It becomes, therefore, unnecessary to inquire whether the probable cause afforded by the conduct of the *Flying Fish* to suspect her of being an American, would excuse Captain Little from damages for having seized and sent her into port? since, had she been an American, the seizure would have been unlawful. Captain Little, then, must be answerable in damages to the owner of this neutral vessel, and as the account taken by order of the circuit court is not objectionable on its face, and has not been excepted to by counsel before the proper tribunal, this court can receive no objection to it.

There appears, then, to be no error in the judgment of the circuit court, and it must be affirmed with costs.

HALLET & BOWNE v. JENKS AND OTHERS¹

Marine insurance.—Illegal voyage

A vessel belonging to citizens of the United States, in the year 1799, driven by distress into a French port, and obliged to land her cargo, in order to make repairs, and prevented by the officers of the French Government from relading her original cargo, and from taking away anything in exchange but produce or bills, might purchase and take away such produce, without incurring the penalties of the non-intercourse act of June 13, 1798. And such voyage was not illegal, so as to avoid the insurance.

Hallet v. Jenks, 1 Caines, Cas. 43; s. c. 1 Caines, Rep. 64, affirmed.

This was a writ of error to the "Court for the Trial of Impeachments, and the Correction of Errors, in the State of New York," under the act of Congress of the 24th September, 1789, § 25 (1 U. S.

¹ 3 Cranch, 210.

Stat. 85), which gives the Supreme Court of the United States appellate jurisdiction upon a judgment in the highest court of a State, in which a decision in the suit could be had, where is drawn in question the construction of any clause of a statute of the United States, and the decision is against the right, privilege or exemption, specially set up or claimed by either party, under such statute.

The action was upon a policy of insurance, and the only question to be decided by this court was, whether the risk insured was illegal, under the act of Congress (commonly called the non-intercourse law) of the 13th June, 1798 (1 U. S. Stat. 565). For although another question appears to arise upon the record, viz., whether a condemnation in a foreign court, as enemy's property, be conclusive evidence of that fact, yet this court is prohibited by the same 25th section of the act of 1789, to consider any other question than that which respects the construction of the statute in dispute.

On the trial of the general issue, a special verdict was found, containing the following facts:

That on the 27th day of April, 1799, the defendants, for a premium of 25 per cent, insured for the plaintiffs against all risks, \$1,000, upon 25,000 pounds weight of coffee, valued at 20 cents per pound, on board the sloop *Nancy*, from Hispaniola to St. Thomas. That in the margin of the policy was inserted a clause in the following words, "warranted the property of the plaintiffs, all Americans," but that the words "all Americans," were added, after the policy was subscribed; that the sloop *Nancy* was built at Rhode Island, and belonged to citizens of the United States, resident in Rhode Island, as well when she left that State, as at the time of her capture, and being chartered by the plaintiffs, sailed from Newport, in Rhode Island, on the 12th day of December, in the year 1798, on her first voyage to the Havana; that in the course of the said voyage, she was compelled, being in distress, to put into Cape François, in the island of Hispaniola, a country in the possession of France, where she arrived on the 5th day of January, 1799; that the master and supercargo of the sloop were part owners of the cargo, and two of the plaintiffs in this suit; that having so put into Cape François, the cargo was landed to repair the vessel; that the public officers acting under the French Government there, took from them nearly all the provisions on board the sloop, and the master and supercargo were permitted to sell, and did sell, the remainder, to different persons there; that the master and supercargo

made a contract with the public officers, by which they were to be paid for the provisions in thirty days, but the payment was not made; that, with the proceeds of the remaining parts of the cargo, they purchased the whole of the cargo which was on board, at the time of the capture, and also seventeen hogsheads of sugar, which they sent home to New York, on freight; that the said officers forbade the said master and supercargo of the sloop, from taking on board the cargo landed from the said vessel, or from conveying from the said island any specie, by reason whereof they were compelled to sell the same, and to take the produce of that country in payment. That the sloop, with 30,000 weight of coffee on board, 25,000 pounds weight of which was intended to be insured by the present policy, sailed from Cape François, on the 23d day of February, in the year last aforesaid, on the voyage mentioned in the policy of insurance, having on board the usual documents of an American vessel; that the sloop, in the course of her said voyage, was captured by a British frigate, and carried into the island of Tortola, and vessel and cargo libelled, as well for being the property of the enemies of Great Britain, as for being the property of American citizens, trading contrary to the laws of the United States; that, at the time of the capture of the sloop, besides the documents aforesaid, the following paper was found on board:

Liberty—Safe Conduct—Equality

At the Cape, 11th Termidor, sixth year of the French Republic, one and indivisible. The general of division and private agent of the executive directory at St. Domingo, requests the officers of the French navy and privateers of the republic, to let pass freely the American vessel called the ———, ——— master, property of Mr. E. Born Jenks, merchants at Providence, State of Rhode Island, in the United States, arrived from the said place to the Cape François, for trade and business. The citizen French consul, in the place where the said vessel shall be fitted out, is invited to fill with her name, and the captain's, the blank left on these presents; in attestation of which, he will please to set his hand hereupon.

(Signed) J. HEDOUVILLE.

GAUTHIER,
the general secretary of the agency.

Which paper was received on board the sloop, at Cape François, and was on board when she left that place; that the property insured

by the policy aforesaid was claimed by the said Zebedee Hunt, and was condemned by a sentence of the said court of vice-admiralty, in the following words: "That the said sloop *Nancy*, and cargo on board, claimed by the said Zebedee Hunt, as by the proceedings will show to be enemy's property, and as such, or otherwise, liable to confiscation, and condemned the same as good and lawful prize to the captors." That the plaintiffs are Americans, and were owners of the property insured, and that the same was duly abandoned to the underwriters.

That part of the act of Congress, which the underwriters contended had been violated by the defendants in error, is as follows:

§ 1. That no ship or vessel, owned, hired or employed, wholly or in part, by any person resident within the United States, and which shall depart therefrom, after the first day of July next, shall be allowed to proceed directly, or from any intermediate port or place, to any port or place within the territory of the French Republic, or the dependencies thereof, or to any place in the West Indies, or elsewhere, under the acknowledged government of France, or shall be employed in any traffic or commerce with or for any person, resident within the jurisdiction, or under the authority of the French Republic. And if any ship or vessel, in any voyage thereafter commencing, and before her return within the United States, shall be voluntarily carried, or suffered to proceed to any French port or place as aforesaid, or shall be employed as aforesaid, contrary to the intent hereof, every such ship or vessel, together with her cargo, shall be forfeited, and shall accrue, etc.

The second section enacts, that after the first of July, 1798, no clearance for a foreign voyage shall be granted to any ship or vessel owned, hired or employed, wholly or in part, by any person resident within the United States, until a bond shall be given, in a sum equal to the value of the vessel and cargo, "with condition, that the same shall not, during her intended voyage, or before her return within the United States, proceed or be carried, directly or indirectly, to any port or place within the territory of the French Republic, or the dependencies thereof, or any place in the West Indies, or elsewhere, under the acknowledged government of France, unless by distress of weather, or want of provisions, or by actual force or violence, to be fully proved and manifested before the acquittance of such bond; and that such vessel is not, and shall not, be employed, during her intended

voyage, or before her return, as aforesaid, in any traffic or commerce with or for any person resident within the territory of that republic, or in any of the dependencies thereof." June 13, 1798. (1 U. S. Stat. 565.)

Mason, for the plaintiffs in error.—If the insurance was upon an illegal transaction, the defendants in error have no right to recover. The only question for the consideration of this court is, whether it be a transaction prohibited by the act of Congress. If the purchase of this cargo in Cape François was lawful, the policy is good.

The first section of the act has two branches, and contemplates two separate offenses: 1st. That no vessel shall be allowed to go to a French port. But this prohibition must be subject to the general principle, that the act of God, or of the public enemy, shall be an excuse. 2d. That if driven into such port by distress, or involuntarily carried in, yet there shall be no trade or traffic. The words are, "if any vessel shall be voluntarily carried, or suffered to proceed to any French port or place as aforesaid, or shall be employed as aforesaid." The going in must be voluntary, but the legislature carefully omit the word voluntarily, when speaking of the offense of trading, for all trading must be voluntary; it can not be by compulsion. The object was to prevent intercourse, and the statute only makes the same saving of the forfeiture which a court would have made without such a saving clause.

The condition of the bond mentioned in the second section confirms this construction of the first. It is divided into two clauses, agreeable to the two offenses to be provided against. The proviso "unless by distress of weather," etc., is annexed only to the offense of going into the port, but there is no saving or exception as to the offense of trading. If she had not been driven in by distress of weather, she would have been liable to forfeiture, under the first offense. But having been employed in traffic with persons resident, etc., she is equally liable to forfeiture, under the second, and the condition of the bond has been substantially broken.

The special verdict states, "that the master and supercargo were permitted to sell, and did sell, the residue of the cargo, to different persons there." Here was no compulsion. This selling was a violation of the law; but it is not that which avoids this policy. The fault was, that with the proceeds of those sales, the plaintiffs below purchased the cargo insured. There was no compulsion to do this, except

what I shall presently notice, as stated in the verdict. It will probably be contended, that the following words of the verdict show a compulsion, viz., "that the said officers forbade the said master and supercargo from taking on board the cargo landed from the said vessel, or from conveying from the said island any specie, by reason whereof, they were compelled to sell the same, and to take the produce of that country in payment." But this is only the reasoning of the jury, and the words, by reason whereof, show what kind of compulsion it was, and that it was not that inevitable necessity which can excuse the express violation of the law. The owners ought to have said to them, if you forbid us to take away our property, we must leave it, and look to our Government for an indemnification; for they have forbidden us to sell it to you, or to purchase a new cargo. The forbidding them to relade their goods, and to take away specie, was no compulsion to purchase produce. The verdict does not state that the master or supercargo attempted to resist the force; it may be wholly a colorable transaction.

The act of the 27th February, 1800 (2 U. S. Stat. 7), shows what the construction of that of 1798 ought to be. The third section of the former provides, that in case the vessel shall be compelled, by distress or superior force, to go into a French port, and shall there necessarily unlade and deliver, or shall be deprived of any cargo then on board, the master may receive payment in bills of exchange, money or bullion, and not otherwise, "and shall not thereby be understood to contravene this law." This is a clear implication, that if there had not been such an express permission to receive payment in bills of exchange, money or bullion, it would have been a contravention of the law; and that law, excepting this provision, is substantially the same as the law of 1798.

Harper, contra.—I might safely agree to the first position taken by the opposite counsel, that the first section of the act of 1798 creates two distinct offenses. But this is not so. The whole constitutes but one offense. How is a ship to be employed in traffic? She must bring and carry. If she did not go voluntarily, she was not employed in trafficking. If the master sell the cargo, under such circumstances, the vessel is not employed in traffic. But if the act creates two separate offenses, how is the vessel employed in the traffic? She did not carry the cargo there voluntarily. But it being there, and landed, neces-

sarily landed, how is the vessel concerned in the sales and purchases made by the master? The necessity of repairing the vessel is as much an excuse for landing the cargo, as stress of weather was for going in. The master was forbidden to relade it. But a difference is taken between prohibition and prevention. It is said, that the forbidding is not preventing. But by whom was the prohibition? By the officers of the Government, having authority and power to carry the prohibition into effect. It was, therefore, actual prevention.

What was the mischief intended to be remedied by the act of Congress? Not such a sale as this. It was to prevent a voluntary intercourse, not to prevent citizens of the United States from rescuing their property from impending loss. What is traffic? A contract by consent of both parties. If one is under compulsion, it is no contract, no traffic. The transaction disclosed by the verdict, is only the means of saving property from a total loss. The owners were not obliged to abandon, as the gentleman contends, property thus put in jeopardy. The master and supercargo were not free agents. They were not obliged to take bills, which they knew would not be paid. If I could have had a doubt upon this case it would have been removed by the decisions of the circuit courts of the United States. In a case before one of your Honors,¹ in Baltimore, a vessel had brought home from the French West Indies, a cargo of the produce of those islands, after having been compelled to go in and sell her outward cargo; and it was decided, that the case was not within this act of Congress. A similar case is understood to have been decided by another of your Honors,² in New York. If those cases were not within the law I am warranted in saying, this is not.

Those decisions produced the third section of the act of 1800, which the gentleman has cited, and which was introduced, to shut the door that had been left open. It was perceived, that the law, as it stood before, would give an opportunity of fraud. The third section was enacted to take away the temptation; because, although there might be cases, clear of fraud, it was thought best to sacrifice these particular cases, that fraud might be prevented in others. This section, therefore, has given a sanction to the decisions of the circuit courts.

¹Judge WASHINGTON.

²Judge PATERSON, in September, 1799, in the case of Richardson and others, cited in 1 Caines' Rep., p. 63.

Key, in reply.—It is clear, that there are two distinct prohibitions in the act. The two parts of the section are connected by the disjunctive "or," and not by the copulative "and." This is rendered still more evident, by the form of the condition of the bond described in the second section.

Whenever you rely on the necessity of the case, to justify your acts, you must not go beyond the necessity. All beyond is voluntary. In this case, it might go to the landing, and to the seizure of part, but not to the sale of the residue. The probability of loss is not necessity. If they took produce, it was only to avoid a greater loss. It was not an inevitable necessity. Another fact shows that it was trading; not merely taking on board, to bring home, property which they were compelled to receive. She was not coming home with the property, when she was captured, but going on a trading voyage. And the French pass states that she came to Cape François for trade and business. The intention of the act was to prevent all trading and intercourse with France or her dependencies.

In the case at Baltimore, before his Honor Judge WASHINGTON, the vessel returned directly home to Baltimore, with produce, which she had been compelled to take or abandon.

Mason, on the same side.—It is said, there must be a preexisting intention to go to a French port. If the sloop had arrived safe at the Havana, and been there sold to an agent of the French Government, it is clear, she would have been liable to forfeiture. So, if the French agent, who signed the passport, had freighted the vessel. These cases show that a preexisting intention is not necessary. The construction contended for would, indeed, open a wide door to fraud, as the gentleman has contended. It would only be necessary to start a plank, in sight of the port, and then go in to stop the leak, and the whole law is evaded.

March 6, 1805. MARSHALL, Ch. J., delivered the opinion of the court, to the following effect:—The court is of opinion, according to the best consideration they have been able to give the subject, that this case is not within the act of Congress of 1798, usually called the non-intercourse law.

It is contended by the counsel for the defendant, that the circumstances stated in the special verdict, do not show an absolute necessity

for the trading therein described. And it is said, the plaintiff might have abandoned the property, and sought redress of his government; and that it was his duty to do so, rather than violate the laws of his country. But the court is of opinion, that the act of Congress did not impose such terms upon a person who was forced by stress of weather to enter a French port, and land his cargo, and was prevented by the public officers of that port to relade and carry it away. Even if an actual and general war had existed between this country and France, and the plaintiff had been driven into a French port, a part of his cargo seized, and he had been permitted by the officers of the port to sell the residue, and purchase a new cargo, I am of opinion, that it would not have been deemed such a traffic with the enemy, as would vitiate the policy upon such new cargo. The terms of the act of Congress seem to imply an intentional offense on the part of the owners.

The case put, of a French agent going to the Havana, and there purchasing the cargo for the use of the French Government, under a preconcert with the owners, would certainly be an offense against the law; but when there is no such intention; when the vessel has been absolutely forced, by stress of weather, to go into a French port, and land her cargo; when part has been seized for the use of the Government of France, and the master has been forbidden by the public officers of the port to relade the residue, and to sell it for any thing valuable, except the produce of the country; the mere taking away such produce, can not be deemed such a traffic as is contemplated by the act of Congress.

Judgment affirmed, with costs.¹

SANDS v. KNOX²

Non-intercourse act

The non-intercourse act of June 13, 1798, did not impose any disability upon vessels of the United States, sold *bona fide* to foreigners, residing out of the United States, during the existence of that act.

Error to the Court for the Trial of Impeachments and the Correction of Errors, in the State of New York.

¹See the opinion of the supreme court of New York, in this case, in 1 Caines' Rep. 64, and that of the High Court for the Trial of Impeachments and Correction of Errors, in the State of New York, delivered by Lansing, Chancellor, in 1 Caines' Cases in Error, p. 43.

²3 Cranch, 499.

Thomas Knox, administrator, with the will annexed, of Raapzat Heyleger, a subject of the King of Denmark, brought an action of trespass *vi et armis*, in the supreme court of judicature of the State of New York, against Joshua Sands, collector of the customs for the port of New York, for seizing and detaining a schooner called the *Jennett*, with her cargo.

The defendant, Sands, pleaded in justification, that he was collector, etc., and that after the 1st day of July, 1798, viz., on the 16th of November, 1798, the said schooner, then being called the *Juno*, was owned by a person resident within the United States, at Middletown, in Connecticut, and cleared for a foreign voyage, viz., from Middletown to the island of St. Croix, a bond being given to the use of the United States, as directed by the statute, with condition that the vessel should not, during her intended voyage, or before her return within the United States, proceed, or be carried, directly or indirectly, to any port or place within the territory of the French Republic, or the dependencies thereof, or any place in the West Indies, or elsewhere, under the acknowledged government of France, unless by stress of weather, or want of provisions, or by actual force or violence, to be fully proved and manifested before the acquittance of such bond, and that such vessel was not, and should not be, employed, during her said intended voyage, or before her return as aforesaid, in any traffic or commerce with, or for, any person resident within the territory of that republic, or in any of the dependencies thereof. That afterwards, on the 8th of December, 1798, she did proceed, and was voluntarily carried from Middletown to the island of St. Croix, in the West Indies, and from thence, before her return within the United States, to Port de Paix in the island of St. Domingo, being then a place under the acknowledged government of France, without being obliged to do so by stress of weather, or want of provisions, or actual force and violence, whereby, and according to the form of the statute, the said schooner and her cargo became forfeited, the one-half to the use of the United States, and the other half to the informer; by reason whereof, the defendant, being collector, etc., on the 1st of July, 1799, arrested, entered and took possession of the said vessel and cargo, for the use of the United States, and detained them as mentioned in the declaration, and as it was lawful for him to do.

The plaintiff, in his replication, admitted that the defendant was collector, etc., that at the time she sailed from Middletown for St. Croix,

she was owned by a person then resident in the United States; and that a bond was given as stated in the plea; but alleged, that she sailed directly from Middletown to St. Croix, where she arrived on the 1st of February, 1799, the said island of St. Croix then and yet being under the government of the King of Denmark. That one Josiah Savage, then and there being the owner and possessor of the said vessel, sold her, for a valuable consideration, at St. Croix, to the said Raapzat Heyleger, who was then, and until his death continued to be, a subject of the King of Denmark, and resident at St. Croix, who, on the 1st of March following, sent the said vessel, on his own account, and for his own benefit, on a voyage from Port de Paix to St. Croix, without that, that she was at any other time carried, etc.

To this replication, there was a general demurrer and joinder, and judgment for the plaintiff, which, upon a writ of error to the court for the trial of impeachments and correction of errors, in the State of New York, was affirmed. The defendant now brought his writ of error to this court, under the 25th section of the judiciary act of the United States. (1 U. S. Stat. 85.)

The only question which could be made in this court, was upon the construction of the act of Congress, of June 13, 1798 (1 U. S. Stat. 565), commonly called the non-intercourse act; the first section of which is in these words: "That no ship or vessel, owned, hired or employed, wholly or in part, by any person resident within the United States, and which shall depart therefrom, after the 1st day of July next, shall be allowed to proceed, directly, or from any intermediate port or place, to any port or place within the territory of the French Republic, or the dependencies thereof, or to any place in the West Indies, or elsewhere, under the acknowledged government of France, or shall be employed in any traffic or commerce with or for any person, resident within the jurisdiction or under the authority of the French Republic. And if any ship or vessel, in any voyage thereafter commencing, and before her return within the United States, shall be voluntarily carried, or suffered to proceed, to any French port or place as aforesaid, or shall be employed as aforesaid, contrary to the intent hereof, every such ship or vessel, together with her cargo, shall be forfeited, and shall accrue, the one-half to the use of the United States, and the other half to the use of any person or persons, citizens of the United States, who will inform and prosecute for the same; and shall be liable to be seized, prosecuted and condemned, in any

circuit or district court of the United States, which shall be holden within and for the district where the seizure shall be made."

The condition of the bond stated in the plea, corresponded exactly with that required by the second section of the act. The seventieth section of the act of 2d of March, 1799 (1 U. S. Stat. 678), makes it the duty of the several officers of the customs, to seize any vessel liable to seizure, under that or any other act of Congress respecting the revenue.

C. Lee, for the plaintiff in error.—The question is, whether the act of Congress does not impose a disability upon the vessel itself?

This vessel was clearly within the literal prohibition of the act. She was "owned wholly by a person resident within the United States." She did "depart therefrom, after the 1st day of July (then) next." She did "proceed from an intermediate port or place, to a place in the West Indies, under the acknowledged government of France." She was also a vessel which, "in a voyage thereafter commencing, and before her return within the United States," was "voluntarily carried, or suffered to proceed, to a French port." She had, therefore, done and suffered every act which, according to the letter of the law, rendered her liable to forfeiture, seizure and condemnation.

It is true, that the decision of this court, in the case of the *Charming Betsy*, 2 Cr. 115, seems, at first view, to be against us. But the present question was not made, and could not arise, in that case, because that vessel had not been to a French port, nor had she returned from a French port to the United States. If such a trade as the present case presents were to be permitted, the whole object of the non-intercourse act would be frustrated. A vessel of the United States may, according to the judgment in the case of the *Charming Betsy*, be sold and transferred to a Dane, and he may trade with her as he pleases; but we say, it is with this proviso, that he does not send her from a French port to the United States. He takes the vessel with that restriction. If he trades to the United States, he is bound to know and respect their laws. The intention of the law was not only to prevent American citizens, but American vessels, from carrying on an intercourse with French ports.

The case of the *Charming Betsy* was under the act of February, 1800; but the present case arises under that of 1798, which is very

different in many respects. The opinion in that case, so far as it was not upon points necessarily before the court, is open to examination. Neither the words of the law, nor the form of the bond, make any exception of the case of the sale and transfer of the vessel, before her return. If, therefore, a sale is made, it must be subject to the terms of the law; and although the vessel may not be liable to seizure upon the high seas, yet upon her return to the United States, it became the duty of the custom-house officer to seize her. The law ought to be so construed as to carry into effect the object intended. That object was, to cut off all intercourse with France, and by that means compel her to do justice to the United States. But if this provision of the law is to be so easily eluded, France will be in a better situation than before, for she will receive her usual supplies, and we shall be weakened by the loss of the carrying trade.

Bayard, contra, was stopped by the court.

MARSHALL, Ch. J.—If the question is not involved, whether probable cause will justify the seizure and detention; if there are no facts in the pleadings which show a ground to suspect that there was no *bona fide* sale and transfer of the vessel, the court does not wish to hear any argument on the part of the defendant in error. It considers the point as settled by the opinion given in the case of the *Charming Betsy*, with which opinion the court is well satisfied. The law did not intend to affect the sale of vessels of the United States, or to impose any disability on the vessel, after a *bona fide* sale and transfer to a foreigner.

Judgment affirmed.

Judgments of the Court of Claims of the United States

WILLIAM GRAY, ADMINISTRATOR, v. THE UNITED STATES¹

[No. 7, French Spoliations. Decided May 17, 1886]

On the Proofs

The treaties of 1778 bind America and France in reciprocal obligations looking to independent sovereignty for the one and certain exclusive privileges for the other. Subsequent to the peace of 1782 the French revolutionary government charges violations of the treaty in not according to France her exclusive privileges, and on the publication of the Jay treaty, 1795, breaks off diplomatic relations. Between 1791 and the treaty of 1800 France is guilty of depredations on American commerce in violation both of treaties and the law of nations. A state of partial, maritime war exists. In 1800, negotiations being renewed, the French Government demands restoration of the exclusive privileges and indemnity for their withdrawal. The American offers 8,000,000 francs to be released, but insists on indemnity for its citizens. Finally the treaty of 1800 is ratified with both pretensions stricken out, France renouncing her claim for the treaty privileges and America her claim for the wrongs done her citizens. In 1885 an act is passed authorizing American citizens having "*valid claims to indemnity upon the French Government arising out of illegal captures, detentions, seizures, condemnations, and confiscations,*" prior to the treaty of 1800, to bring suit, and directing this court to "*determine the validity and amount*" thereof.

- I. The power of this court to grant redress in the French spoliation cases is necessarily limited by the terms of the *Act of January 20, 1885* (23 Stat. L. 283), conferring jurisdiction.
- II. The act casts upon the courts the duty of determining judicially both that the French seizures were "*illegal*" and the American claims are "*valid*."
- III. The treaties of alliance and commerce with France 1778, having been concluded upon the same day and the result of the same negotiation and signed by the same plenipotentiaries, are in diplomatic effect one instrument.
- IV. The treaty of commerce assured to France exclusive privileges; the treaty of alliance cast upon the American Government the obligation

¹ Court of Claims Reports, vol. 21, page 340.

of maintaining French possessions in America; the Jay treaty of 1795, granting the same commercial privileges to England, necessarily conflicted with the French treaties.

- V. A judicial tribunal must treat the facts of a former international dispute only as they affect private rights. Its decision can not properly be regarded as a reflection upon the treaty-making power.
- VI. A seizure upon the high seas of an American vessel bound for a neutral port on the alleged ground of her having violated French regulations "*concerning the navigation of neutrals*," was an illegal seizure, and the claims resulting therefrom a valid claim, for which the American Government was morally bound to demand redress.
- VII. Concerning the question whether war existed between America and France prior to the treaty of 1800 and the nature and extent thereof, the judicial department must follow the political.
- VIII. The acts of 1798 and 1799, the declarations and actions of the Executive, and the conduct and assurances of the two Governments conclusively show that while there was a limited maritime war (in its nature a prolonged series of reprisals), nevertheless no state of public general war existed, such as would abrogate treaties, suspend private rights, or authorize indiscriminate seizures and condemnations.
- IX. The claims which the French Government renounced by the treaty of 1800 were national; those which our Government renounced were individual; and the reciprocal renunciation constituted the bargain effected by the treaty of 1800.
- X. All claims urged by one nation upon another are technically national; but there is a distinction between claims founded upon injury to the whole people and those founded upon injury to particular citizens.
- XI. The bargain whereby this Government obtained the renunciation of the French claims against itself, and the relinquishment of its obligations under the treaty of 1778, brings these cases within the provision of the Constitution, that "private property shall not be taken for public use without just compensation."
- XII. The claims renounced by the treaty of 1800 were unliquidated demands for wrong and injury; the debts provided for by the treaty of 1803 were obligations in the nature of contract, or for captures as to which restitution had been ordered by the council of prizes. Therefore the latter treaty does not extend to the former demands.
- XIII. The attempt of the French Government to regulate by its own decrees the conduct of neutral merchantmen upon the high seas was contrary to the law of nations and void; and the seizure of an American vessel on the alleged ground that her "*rôle d'équipage*" was not in the form prescribed by French law was illegal.
- XIV. A citizen must exhaust his remedy in the courts of a foreign power before he can call upon his own Government for diplomatic redress;

but the decision of the foreign tribunal is not final, being the very beginning of the international controversy; and the doctrine is applicable only where the courts are open and the citizen free to seek redress.

- XV. The treaty of 1819 with Spain does not extend to the French spoliation cases.
- XVI. The treaty of 1831 with France does not extend to the claims renounced and, from an international point of view, extinguished by the treaty of 1800.
- XVII. Whether the *Act of May 28, 1798* (Stat. L. 561), abrogated the treaty of 1778 is an immaterial question here, inasmuch as the claims rest on the violation of neutral rights under the law of nations.
- XVIII. The *French Spoliation Claims Act, 1885* (23 Stat. L., § 3, p. 283), while requiring this court to determine the "*present ownership*" of a claim, does not require it to act as a court of probate and settle estates of deceased owners. Hence an action may be maintained by an administrator.

The Reporters' statement of the case:

This is the leading French spoliation case, but at the time when it was brought before the court a number of cases were presented by the various counsel, whose names are given below, and the general question of the Government's liability, and the general principles more or less applicable to all of these cases, were discussed at great length.

The decision was understood to be final as to this case, but no order was entered at the time of its rendition.

Mr. William Gray for the claimant, William Gray, administrator.

Mr. William E. Earle (with whom was *Mr. Samuel Shellabarger*) for the claimant, F. K. Carey.

Mr. Fisher Ames for the claimant, Fisher Ames, administrator.

Mr. Leonard Myers for various claimants residing in Philadelphia.

Mr. Lawrence Lewis, Jr., for the same and other parties.

Mr. J. Hubley Ashton for the city of Philadelphia.

Mr. Benjamin Wilson for the defendants.

DAVIS, J., delivered the opinion of the court:

This claim, one of the class popularly called "French spoliations," springs from the policy of the French revolutionary government be-

tween the execution of King Louis XVI and the year 1801, a policy which led to the detention, seizure, condemnation, and confiscation of our merchant vessels peacefully pursuing legitimate voyages upon the high seas. Over ninety years have these claims been the subject of discussion and agitation, first between the two nations, and then between the individuals injured and the Government of the United States. Prolonged and heated negotiation resulted in the treaty of 1800, by which, it is urged on behalf of the claimants, their rights were surrendered to France for a consideration valuable to this Government. The claims being valid obligations admitted by the French Government, they contend that the United States, through this agreement, in which demands of the one nation were set off against those of the other, assumed as against their citizens these obligations and should pay them. This position is denied by the Government, which in addition presents other defenses based upon subsequent transactions between the two countries, urging that thereby were destroyed any beneficial rights possibly vested in the claimants, if their contention as to the treaty of 1800 be correct.

The act sending the claims to this court, while the third that has passed both Houses of Congress, is the first that has received the approval of a President, as one was vetoed by President Polk, another by President Pierce, while this, the third, was signed by President Arthur.

Whatever the rights of the claimants, they are without remedy other than that which Congress may have seen fit to give them; and our power to grant redress, be our opinion as to the justice of their claims what it may, is limited by the terms of the remedial statute. The force and effect of the act, by virtue of which the claimants appear at this bar seeking relief, must then be examined at the threshold of the discussion. The act authorizes "citizens of the United States or their legal representatives," having "valid claims to indemnity upon the French Government arising out of illegal captures, detentions, seizures, condemnations, and confiscations," prior to the ratification of the convention of 1800 with France, to apply here within a time limited (§ 1), that (§ 3) this court may "examine and determine the validity and amount" of their claims, the present ownership, and, if owned by an assignee, certain details in regard thereto. The act excludes from its benefits claims embraced in certain conventions with France and Spain, concluded in 1803, 1819, and 1831, and with pro-

visions as to rules of court, defense of the United States, evidence and other matters not important for our immediate purpose, directs this court, as to the claims thus placed within our jurisdiction, to report to Congress the first Monday of each December the facts found by us and our conclusions, which are to be taken, both as to law and facts, as advisory and not conclusive upon either party, the claimants or the Government.

So peculiar a jurisdiction was probably never before conferred upon a strictly judicial tribunal. The rights of the claimants, if any exist, arise from the acts of the political branch of the Government done in the protection and aid of the nation. For such rights there can be no remedy other than that granted by the legislature; in this instance the legislature has elected to transmit to the judiciary, under certain restrictions, the examination of the claimants' demands, with the proviso that the conclusion reached in this forum shall not be finally binding upon either party, but that the defendants, as well as the claimants, have reserved to them an appeal, not in the regular line of judicial procedure to the Supreme Court of the United States, but back again to that body, from which alone any remedy can come to the citizen for wrongs done him by his Government.

The reason for this peculiar grant of remedy is found in the nature of the claims, which spring from international controversies of the gravest character intimately entwined with the history of our struggle for independence; also in the age of the claims; and, lastly, in the absolutely indeterminate amount of financial responsibility which will be thrown upon the Government should the claims be found to exist as valid obligations due from the United States to their citizens. Good or bad, not one of these claims is enforceable but by the consent of the Congress, and the Congress can affix to that consent such condition as in their wisdom seems just and for the best interests of the Republic. The remedy now granted is an examination and advisory report by the judiciary, to be followed by a decision by the legislative branch of the Government.

It has been said that the validity of the claims as a class is admitted by the act, and this court should confine the examination to each individual claim for the purpose only of determining whether it falls within the class. This is understood to be in effect the argument on behalf of some of the claimants. Our labor and responsibility would be greatly lightened could we agree with this proposition, but the act

of Congress seems clearly to negative the contention, and to throw upon us the duty of investigating the validity of these claims against France and the assumption of them by the United States. It requires us to examine, not claims in a specified category or known by a generic name, not even "claims" simply, but "valid" claims against France, and valid claims arising not merely from captures, detentions, seizures, condemnations, and confiscations, but from acts of this nature which were "illegal." The validity of the claims, as against France, is the very first condition imposed by the legislature upon the grant of remedy. The claims must have been "valid" obligations existing at the time and which this Government had the right to enforce diplomatically before they come within the purport of the statute. To grant as correct the contention that we are to examine in each case whether, and only whether, the seized or detained vessel had violated the law of nations or the treaties—as, for illustration, drawn from the argument, whether she carried contraband of war, or attempted to break an actual blockade, or failed to carry proper papers—if we are to examine only into this, then effect is perhaps given to the word "illegal," found in the statute defining the nature of the acts from which the claims arise, but the word "valid," of equal if not superior force, is entirely ignored.

Clearly Congress expects from us an opinion as to the validity of claims of this class as against France, and the third section of the act, which requires us to receive "historic and documentary evidence," "to decide upon the validity of said claims according to the rules of law, municipal and international, and the treaties of the United States applicable to the same," and to report "all such conclusions of fact and law as in [our] judgment may affect the liability of the United States therefor," is not only confirmatory of this conclusion, but obliges us to go further and to examine into the resultant liability claimed to exist in the Government of the United States to compensate the claimants for the injuries alleged to have been sustained at the hands of the French Republic. This involves an examination of the history of the relations between the two countries from 1777, when negotiations for the treaties of alliance and commerce began, as the whole contention starts with the treaties of 1778 with France, which came to us during the darkest hours of the struggle for independence, and when we were hoping against hope for the aid which there was no prospect of receiving.

Burgoyne had capitulated, Howe had been driven from New Jersey,

and, after the drawn battle of Germantown, was shut up in Philadelphia, where the ease and luxury of a city camp were but occasionally interrupted by an excursion against the enemy on land or an encounter upon the river. Curiously enough, at the end of a successful campaign, the American cause was, barring the indomitable spirit of the patriots, in the direst straits.

Gates, excited by his success at the north and become the president of the executive board of war, had broken with Washington and had used his influence successfully in securing the appointment as inspector-general, against Washington's earnest protest, of a man who had openly defied the commander-in-chief. Washington's army of less than nine thousand men, lying at Valley Forge, was violently assailed by the State of Pennsylvania for not prosecuting an active winter campaign, while even in Congress, to which the remonstrance of the State's council and assembly had been addressed, there was deep discontent as to the policy of the commander-in-chief and sharp criticism upon his conduct. In Philadelphia the British, lodged in comfortable houses, were surrounded by every luxury which a full purse and communication with the outer world could afford; while in the Continental camp, as Washington wrote to Congress, the army was so reduced by cold and starvation, that unless some capital change took place it must "starve, dissolve, or disperse." In Philadelphia there was every comfort and almost every means of dissipation; at Valley Forge nearly three thousand men were unfit for duty because they were barefooted "and otherwise naked" (Sparks's Washington, vol. 5, pp. 197-203), while many were in the hospitals and farm-houses wanting clothes and shoes (*ibid.*). So desperate was the situation that General Huntington preferred fighting to starving, his brigade being out of provisions, while General Varnum, quoting the saying of Solomon that "hunger will break through a stone wall," added, "three days successively we have been destitute of bread; two days we have been entirely without meat. The men must be supplied or they can not be commanded." (*Ibid.* 193.)

This condition of his severely-tried army Washington represented to Congress eloquently and repeatedly. Practically that body did nothing to remedy the evil, but on the other hand, suggested the propriety of attacking Philadelphia, while an expedition of 1,000 men was, against Washington's judgment, detached for an invasion of Canada; an expedition abundantly supplied with commanders in the

persons of three major-generals, but unfortunately lacking in such necessary military details as food, clothing, and transportation. (Bancroft, vol. 9, ch. 27.) The financial condition of the country was in harmony with the physical condition of the army, and the issue of eight and one-half millions of paper money caused an enormous depreciation in the value of the currency, increased the feeling of financial insecurity and necessarily impaired the credit of the Government. The army was small, insufficiently fed, paid, and clad; before them was a strong, rich, and prosperous enemy; the Government was weak, the currency suspected, while disaffection, discontent, and jealousy were prevalent among the highest officers.

Such was the close of the year 1777 at home. Hardy, determined, patriotic, self-sacrificing as the sturdy revolutionists were, probably some way would have been found out of these apparently overwhelming misfortunes; how, no one at that time could possibly foresee. Relief was, however, after weary waiting, to come from a quarter where it had long been expected with hope constantly deferred.

Franklin had early established indirect and secret relations with the court of France through his friend Dumas, a Swiss man of letters residing chiefly in Holland, who was a devoted adherent of the American cause, and who early advised an alliance with France and Spain, it being to their interest that the United States should be independent of England, "whose enormous maritime power [filled] them with apprehensions." In 1776 Silas Deane was sent out as a political agent, and he soon opened secret and informal relations with the French department of foreign affairs. He could not succeed in obtaining from France any open action, but his purchase of munitions of war and supplies, and his many other acts in direct violation of strict neutrality were permitted, winked at, and encouraged. He was told that it was for the interest of both countries "to have the most free and uninterrupted intercourse," but that, the understanding with Britain being good, there could not be recognition of the shipping of military supplies and stores.

Practically in this condition did matters remain after the arrival of the commissioners (Franklin and Lee), although they also constantly pressed the argument contained in the instructions to Deane, namely: France is the country it is fittest for us to obtain and cultivate; the commercial advantages Britain has enjoyed with the colonies have greatly contributed to her wealth and importance; a great part of that

commerce will fall to France, especially (and here is the key of the negotiation) if she favors us now, for our trade is rapidly increasing, our population is rapidly increasing, we are waxing strong and rich, with a great future before us; why not step in now, even at the cost of war with England, a war which under any circumstances you momentarily expect.

French popular sentiment was with us, but to the popular clamor, delicately excited by the astute diplomacy of Franklin and his colleagues, was opposed the clear and calm judgment of the King's advisers, men who conceived it their duty to obtain for their master every advantage possible from the struggling colonies at the least possible expense and risk. Supplies and stores were furnished, but the assistance was not acknowledged; munitions of war found their way across the Atlantic, while the fact was denied to England, and although some of these very supplies came from the arsenals of the Government, that fact even was denied to our own representatives who had forwarded them, and who, as matter of course, knew as much of the transaction as the minister who permitted and disavowed it. Day after day without tiring did Dumas, Deane, Franklin, and Lee press for open action on the part of France. Steadily did they receive promises and secret aid, but always were they postponed as to the great step which should produce France openly to the world as the ally of the colonies and the avowed enemy of England. Before the eyes of Count Vergennes was successfully dangled the bait of a practically exclusive share in American commerce, but still he hoped to secure this advantage without an open rupture with England.

In this condition did matters rest until the news arrived of Burgoyne's defeat. This news, which reached France early in December, 1777, "apparently occasioned as much general joy as if it had been a victory of their own troops over their own enemies." (The commissioners to Committee on Foreign Affairs, Paris, December 18, 1777.) The negotiations instantly took so long a stride forward that before the 18th of December it was decided to conclude a treaty of amity and commerce, the King becoming fixed in his determination to acknowledge and support the independence of the colonies by every means in his power. Nothing could be more generous and liberal than the whole tone and manner of the French negotiation from this time. Once decided and committed as to the policy of openly supporting the colonies, there were no half-spirited measures, no halting at petty de-

tails, no discussion of unimportant trifles, but a generous and open support; nevertheless, it was not until Gates's victory at Saratoga had seemed to turn the tide of events, and while still in ignorance of the want and suffering at Valley Forge, that this action, so vital to the future of the American Republic, was taken. The war for independence was with the assistance of France prosecuted to a successful issue, and at Yorktown the surrender of Cornwallis was made to the combined arms of Washington and Rochambeau under the guns of the fleet of De Grasse.

This brief view of the situation, rehearsing, as it does, details of most familiar history, is only of importance as it relates to what may be called sentimental points made in the argument. The treaties of 1778 were made in obedience to a popular demand in France; they were made for a consideration then deemed valuable by France, and at a moment which then seemed opportune to France; but they came to us when the tide was apparently turning against us, and the aid they promised was generously given us.

The 30th day of November, 1782, provisional articles of peace, acknowledging the thirteen former colonies "to be free and independent," were signed at Paris by the representatives of the United States and Great Britain; the 20th of January, 1783, a cessation of hostilities was declared, and the 3d of September, 1783, the definitive treaty of peace was concluded. France had thus given the major portion of the consideration offered by her for the contract of 1778, and the United States were free, sovereign, and independent, as she had stipulated they should be.

The treaties of 1778 were two in number; that of "alliance," the one of most immediate, and, in fact, at the time, of absolutely vital importance to the United States; and that of "amity and commerce." While separate instruments, they were concluded upon the same day, were the result of the same negotiation, signed by the same plenipotentiaries, and are, in diplomatic effect, one instrument. The treaty of alliance, after referring to its companion, the treaty of commerce, states that the two powers "have thought it necessary to take into consideration the means of strengthening the engagements therein made," and of "rendering them useful to the safety and tranquillity of the two parties; particularly in case Great Britain, in resentment of that connection, . . . should break the peace with France, either by direct hostilities or by hindering her commerce and naviga-

tion in a manner contrary to the rights of nations and the peace subsisting between the two crowns;" and the two powers resolving in such case to join against the common enemy determined upon the treaty, which provided that if war should break out between France and Great Britain during the war for American independence, each party should aid the other according to the exigencies, as good and faithful allies; that the essential end of the alliance, called a "defensive" alliance, was the "liberty, sovereignty, and independence, absolute and unlimited, of the United States."

Provision was also made for a possible conquest of Canada, Bermuda, and the islands in the Gulf of Mexico, and each party was forbidden to conclude a truce or peace with Great Britain without the consent of the other. It was further agreed that neither should lay down arms until the independence of the United States was assured by treaties terminating the war. No claim was to be made by one against the other for compensation, whatever the result, and then came the guaranty, out of which afterwards arose so serious complications, national and international, which not only drove our country, weak and exhausted from seven years' strife, to the verge of war, but also stirred up at home a bitter political contest, carried even into the intimacy of a President's Cabinet.

These stipulations are contained in the eleventh and twelfth articles, whereby each party guaranteed "forever against all other powers"—first, the United States to France: all the possessions of France in America as well as those it might acquire by any future treaty of peace; second, France to the United States: "their liberty, sovereignty, and independence, absolute and unlimited," together with their possessions and their additions or conquests made from Great Britain during the war. Such, in substance, was the treaty of alliance; it has never been contended, so far as known to us, that France did not fulfill the requirements which this instrument imposed upon her during our contest with Great Britain.

The provisions of the other agreement, the treaty of commerce, of importance in this case (alluding to them briefly) required protection of merchantmen; required ships of war or privateers of the one party to do no injury to the other; and provided especial, purely exceptional, and exclusive privileges by each party to the other as to ships of war and privateers bringing prizes into port.

The treaty of alliance was not one-sided, for it imposed upon the

United States a possible duty and burden in the fulfillment of the guaranty of French possessions in America "forever" against all other powers. This issue was presented without delay. The French revolution began; in 1793 the King was beheaded, when France was instantly brought face to face with the powers of Europe, and her possessions in America were soon wrested from her.

England was in the vanguard of the war, and concluded twenty-three treaties with her allies, in which they agreed to starve out the common enemy. To this end was it stipulated that all the ports should be shut against France; that no provisions should be permitted to be exported to France, and that these measures should be continued and others employed for the purpose of injuring French commerce and to bring that nation to just conditions of peace. (Treaty between Great Britain and Prussia, July 14, 1793.) The animus of the alliance is further shown in the instruction of the Czar, who directed his admiral, in fulfillment of stipulations with Great Britain, to prevent the French from receiving supplies, and to that end to seize all French vessels and to send back to their own ports all neutral vessels bound to France, stating that while these measures were not "strictly conformable to the natural laws of war" they were justifiable when employed against "those arrant villains, who have overturned all duties observed towards God, the laws, and the Government; who have even gone so far as to take the life of their own sovereign."

All Europe, except Sweden and Norway, was now arrayed against the new Republic in a bitterness of warfare scarcely with parallel, and which openly descended to an attempt to starve the French people into submission through an attack upon neutral commerce, a course admittedly unjustified by the laws of war. Naturally France looked to the United States for aid, relying upon the pledge of the treaty of 1778 and the assistance rendered us in our scarcely-concluded struggle by her fleet, armies, and treasury.

The commercial relations between France and the United States were already most unsatisfactory. Exceptional favors granted the United States in 1787 and 1788 (*Foreign Relations*, vol. 1, pp. 113-116) and had been withdrawn and the equality upon which French and British vessels were put in our ports had excited jealousy. "No exceptional advantages had come to France from the war of the revolution, and American commerce had reverted to its old British channels." (*Treaties and Conventions*, etc., Bancroft Davis, 985.)

Jefferson, who had been transferred from the legation in Paris to the office of Secretary of State, endeavored to secure the conclusion of a new commercial treaty, but unsuccessfully, and in April, 1792, we find him instructing Mr. Morris that "it will be impossible to defer longer than the next session of Congress some counter regulations for the protection of our navigation and commerce. I must entreat you, therefore, to avail yourself of every occasion of friendly remonstrance on this subject. If they wish an equal and cordial treaty with us we are ready to enter into it." (Jefferson's Works, vol. 3, p. 356.) In June he again writes that "we can not consent to the late innovations without taking measures to do justice to our own navigation" (*ibid.* 449), and after the imprisonment of the King he informed Morris that some matters, such "as reforming the unfriendly restrictions on our commerce and navigation," might be transacted even by the revolutionary government, as a government *de facto*. (*Ibid.* 489.)

The new French minister, M. Genet, started for the United States in the spring of 1793 armed with three hundred blank commissions "to distribute to such as [would] fit out cruisers in our ports to prey on the British commerce." (Foreign Relations, vol. 1, p. 354.) Finally, the condition of affairs caused by the war led to the President's proclamation of neutrality, from which, curiously, and by way of compromise, the word "neutrality" was omitted. (Jefferson's Works, vol. 3, p. 591.)

Genet arrived in the United States the 8th of April, and on the 22d of that month the proclamation was issued declaring that "the duty and interest of the United States require that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial towards the belligerent powers."

Already at Charleston, where he landed, Genet had commissioned privateers and sent them to sea, asserting this action to be authorized by the treaty of 1778, and informing the Secretary of State of his wish that the Federal Government "should observe, as far as in their power, the public engagements contracted by both nations; and that by this generous and prudent conduct they will give at least to the world the example of a true neutrality which does not consist in the cowardly abandonment of their friends in the moment when danger menaces them, but in adhering strictly, if they can do no better, to the obligations they have contracted with them." (Foreign Relations, vol. 1, p. 151.)

In September following Genet asked for fire-arms and cannon to protect the French possessions guaranteed by the United States, but he was answered by the Secretary of War, with what he terms "an ironical carelessness," that "the principles established by the President in his proclamation did not permit him to lend us so much as 'a pistol.' " (Senate Doc. 102, 19th Cong., 1st sess., p. 219.)

The French law of May 15, 1791, which "inhibited Americans from introducing, selling, and arming their vessels" in France, and "from enjoying all the advantages allowed to those built in the ship-yards of the Republic," was suspended by the national convention the 19th day of February, 1793, when extensive privileges were granted our commerce (*ibid.* 35), but in less than three months (9th May, 1793), seventeen days after the date of the President's proclamation, but before news of its contents could have been received, the National Convention issued a decree ordering the arrest of any neutral vessels laden with provisions bound to an enemy's port. That this was an open and palpable violation of neutral rights was not denied, for it was a measure understood to be retaliatory to the course pursued by Great Britain, and compensation was promised to those neutrals who should suffer by its operation. (*Ibid.* 42.)

This decree of May 9, 1793, authorized French vessels of war and privateers to arrest neutral vessels laden with provisions, the property of neutrals, but destined to an enemy's port, or laden with enemy's merchandise, the merchandise to be prize, and the neutral provisions to be paid for, together with proper freight and indemnity for delay. The 23d of the same month American vessels were exempted from the operation of this decree (Foreign Relations, vol. 1, p. 244); five days later this second decree was suspended; July 1 it was again put in force; and July 27 it was repealed, leaving the decree of May 9 finally in force as against American commerce. (*Ibid.*, vol. 3, p. 284.) Our minister remonstrated, and the national assembly vacillated; nevertheless the decree was executed in plain and admitted violation of neutral rights.

The decree of May 9, 1793, and that of November 18, 1794, directed the seizure of neutral vessels containing enemy's goods, although the treaty of 1778 expressly provided that "free ships make free goods" (Art. 23, Treaty of Commerce); and further, under an ordinance of 1744, revived for the purpose, a foreign vessel having on board a supercargo or officer from an enemy's country, or whose crew was by more

than one-third subjects of an enemy, was adjudged prize. Mere clearance for some of the West India Islands, by decree of February 1, 1797, subjected neutral vessels to capture and confiscation; the decree of January 18, 1798, issued by the council of five hundred, condemned neutral vessels carrying any British merchandise, and March 2, 1797, came into force the requirement of the crew list or "*rôle d'équipage*," which will be more fully considered hereafter. (Doc. 102, p. 160.)

President Washington, in 1793 (message December 5), spoke of the vexations and spoliations understood to have been committed on our vessels and commerce by the cruisers and officers of some of the belligerent powers as requiring attention, and suggested that, on receipt of proofs, "due measures would be taken to obtain redress of the past and more effectual provisions against the future;" whereupon proof began immediately to be furnished.

Before this, the Secretary of State, then Mr. Jefferson, had advertised to the world assurances of governmental protection and aid.

I have it in charge from the President [he said in his circular of August 27, 1793,] to assure the merchants of the United States concerned in foreign commerce or navigation that our attention will be paid to any injuries they may suffer on the high seas or in foreign countries, contrary to the laws of nations and existing treaties, and that on their forwarding hither well authenticated evidence of the same, proper proceedings will be adopted for their relief.

Mr. Morris had already brought to the attention of the French minister of foreign affairs "the obnoxious acts of the late assembly," but without securing redress, as the "attention of the Government was too strongly directed towards itself" to think of exterior interests, "and the assembly, at open war with the executive, would certainly reject whatever should now be presented to them." (Doc. 102, p. 31.)

Meantime our relations with Great Britain had become extremely threatening, various questions growing out of the revolution still remained unadjusted, and when the instructions given by the admiralty, June 8, 1793, became known in the United States it was felt that decisive action could not be longer delayed. These instructions directed the commanders of His Majesty's ships of war and privateers to seize all vessels loaded with corn, flour, or meal bound to any port in France.

or to any port occupied by French armies, and to send the vessels thus seized into any convenient harbor that the cargo might be purchased by the British Government and the ships released; also to seize all ships, whatever their cargo, bound to a blockaded port; also to warn off under penalty of seizure any vessel destined to a port not actually blockaded, but "declared" to be blockaded. (Foreign Relations, vol. 1, p. 240.)

Great Britain, when complaint was made of these orders, attempted to justify them upon the insufficient plea that provisions were contraband of war. (Foreign Relations, vol. 1, pp. 240, 448 *et seq.*) Correspondence leading to no prospect of a satisfactory result, the President nominated Mr. Jay as minister, saying to the Senate (April 16, 1794), that "as peace ought to be pursued with unremitted zeal before the last resource, which has so often been the scourge of nations, and can not fail to check the advanced prosperity of the United States, is contemplated," he had concluded to take this action. (*Ibid.* 447.) The instructions given Mr. Jay are not of importance in this connection, as it is sufficient to note the result of his negotiation in the treaty which bears his name, and to compare its important provisions with our agreement made in 1778 with the King of France.

We had promised France that their ships of war and privateers might freely carry whithersoever they pleased the ships and goods taken from their enemies; that these prizes should not be arrested or seized, or examined, or searched in our ports, but might at any time freely leave, while no shelter or refuge was to be given to vessels having made prize of her "subjects, people, or property." (Art. 17, Treaty of Commerce, 1778.) The United States had thus given France, and for consideration, not only a valuable, but an exclusive right; yet the Jay treaty, in the twenty-fifth article, gave these same privileges to Great Britain, excluding all vessels which "should have made prize upon [her] subjects."

The conflict of the treaties is evident and of course was fully appreciated at the time.

While the Jay treaty was concluded in November, 1794, its ratifications were not exchanged until October the following year, and meantime the British orders in council directing seizure of our vessels and provisions bound to France were so enforced as to call forth from Mr. Randolph, then Secretary of State, the warning, as late as July, 1795, that the Jay treaty had not yet been ratified by the President;

"the late British order in council for seizing provisions is a weighty obstacle to ratification. I do not suppose that such an attempt to starve France will be countenanced." (Foreign Relations, vol. 1, p. 719.) Every endeavor was made by the United States to secure a repeal of the admiralty order, but without success, and finally our minister in London, Mr. Adams, was instructed that if, after every prudent effort, he found it could not be removed, its continuance was not to be an obstacle to the exchange of ratifications. The order was not removed or modified; nevertheless ratifications of the treaty were exchanged the following October.

It should here be noted that soon after the exchange a commission was organized which, among other subjects, was to ascertain the amount of the claims of American citizens on Great Britain for captures made in violation of international law. After various interruptions the labors of this tribunal closed in February, 1804, when awards considerably exceeding a million and a quarter pounds sterling had been made in favor of the United States on account of these claims. (*Treaties and Conventions*, etc., Bancroft Davis, 1014-1016.) This commission existed by virtue of the sixth and seventh articles of the Jay treaty, the latter of which provided that whereas complaints had been made by citizens of the United States that during the course of the war "in which His Majesty is now engaged they have sustained considerable losses and damage by reason of irregular or illegal captures or condemnations of their vessels and other property under color of authority or commissions from His Majesty," it was agreed that where adequate compensation could not then be actually obtained in the ordinary course of justice full compensation would be made by the British Government.

Note further that these claims were for spoliations committed by England to starve the French, as the claims now before us are for spoliations committed by France to feed her people, and, again, remember, by way of explanation, that the remedy alluded to in the Jay treaty as being perhaps obtainable in due course of justice, was a possible recovery by the captured vessel in an action against the privateer upon his bond.

Mr. Morris, proving unacceptable to the French Government, was recalled at their request, and succeeded by Mr. Monroe, who endeavored to secure from his colleague, Mr. Jay, information as to the latter's negotiation, which was refused, as Monroe declined to pledge

himself not to communicate it to the French Government. (Foreign Relations, vol. 1, pp. 517, 700.) France was restive under the situation, and, shortly after the ratification of the treaty, asked whether the President had caused orders to be given to prevent the sale of prizes conducted into the ports of the United States by vessels of the Republic or privateers armed under its authority. As to this question the Secretary of State informed the President:

That the twenty-fifth article of the British treaty having explicitly forbidden the arming of [French] privateers, and the selling of their prizes in the ports of the United States, the Secretary of the Treasury prepared, as a matter of course, circular letters to the collectors to conform to the restriction contained in that [article of the British treaty] as the law of the land. This was the more necessary, as formerly the collectors were instructed to admit to an entry and sale the prizes brought into our ports by the French.

The Secretary also wrote our minister in London that orders had been given to prevent the sale of prizes brought into United States ports by French privateers, "conformably with the twenty-fifth article" of the Jay treaty. So we had finally and openly transferred any exclusive rights of France under the treaty of commerce to her bitter enemy, Great Britain.

But we had another obligation towards our former ally, that of guaranteeing her West India Islands.

Long prior to this (December 11, 1787) Jefferson, while in Paris, had told the British minister there, during a discussion as to the effect of the treaties of 1778, in case of war between France and Great Britain, and told him "frankly and without hesitation," that the dispositions of the United States would then be neutral, and that this would be to the interest of both powers, because it would relieve both from all anxiety as to feeding their West India Islands; that England, too, by suffering us to remain so, would avoid a heavy land war on our continent, which might very much cripple her proceedings elsewhere; that our treaty [with France] indeed obliged us to receive into our ports the armed vessels of France, with their prizes, and to refuse admission to the prizes made on her by her enemies; that there was a clause, also, by which we guaranteed to France her American possessions, and which might perhaps force us into the war if these

were attacked. "Then it will be war," said the minister, "for they will assuredly be attacked."

In 1790 another American minister informed the English secretary of state for foreign affairs "that in a war between Great Britain and the House of Bourbon (a thing which must happen at some time) we [the United States] can give the West India Islands to whom we please, without engaging in the war ourselves, and our conduct must be governed by our interest" (Wait's American State Papers, vol. 10, p. 97); and this in face of a treaty concluded but twelve years before wherein we pledged ourselves to a guaranty "forever" of the possessions in America of that very House of Bourbon. Early in 1794 Mr. Jefferson, then Secretary of State, said, as to this subject, that he had no doubt we should interpose at the proper time "and declare both to England and France that these islands are to rest with France, and that we will make a common cause with the latter for that object." (Jefferson to Madison, April 3, 1794, Jefferson's Works, vol. 4, p. 103.)

The understanding, therefore, seems to have been clear, yet the West India Islands went to England.

The French spoliations began heedlessly through the mistaken action of subordinates, who confounded Americans with English, because of the identity of race and language. In October, 1793, Mr. Deforgues wrote to Mr. Morris:

We hope that the Government of the United States will attribute to their true cause the abuses of which you complain, as well as other violations of which our cruisers may render themselves guilty in the course of the present war. It must perceive how difficult it is to contain within just limits the indignation of our marines, and, in general, of all the French patriots, against a people speaking the same language and having the same habits as the free Americans. The difficulty of distinguishing our allies from our enemies has often been the cause of offenses committed on board your vessels. All that the administration can do is to order indemnification to those who have suffered and to punish the guilty. (Doc. 102, p. 70.)

Not long, however, could this plaintive response suffice as an excuse for the outrages committed upon our citizens and their property, for, as we have seen by the decrees already cited (and there were many more), the assembly soon joined in the attack, authorized it, and rendered it governmental.

A single mistaken capture might be forgiven, provided proper compensation were made for injury to the citizen; but, when wholesale seizures were directed by the legislature and thereupon made by the executive, the matter assumed a much more serious and difficult aspect. To use the words of Mr. Sumner:

As intelligence of these spoliations reached the United States our whole commerce was fluttered. Merchants hesitated to expose ships and cargoes to such cruel hazards, and thereupon appeared the circular letter of the Secretary of State and the President's proclamation encouraging, by the promise of protection, those injured by the spoliators.

So ended the first phase of this controversy with a nation to whom we were bound by the strongest treaty ties, a nation engaged in war against an apparently overwhelming force and whose enemies used means of attack openly admitted to be contrary to the laws of civilized warfare; in alleged self-defense, it pursued an equally if not more indefensible course, which resulted in severe and unjustifiable loss to our citizens. That this system of seizures or spoliations was forbidden by every principle of civilized warfare was frankly admitted at the time, and later, England, which had pursued a similar course, made ample amends, and Spain which had countenanced the policy of France, and lent her ports in aid of it, did the same.

Nor were we altogether clear of blame. We had not complied, so far as appears, with the stipulations of the treaties of 1778, intended to provide for possible war; we had not protected the West India Islands, and not only had we refrained from acting as the ally of France, but, by the Jay treaty, we had given to her enemy the exclusive port privileges which she most valued, and which were secured to her by the treaty of amity and commerce.

It is not for us to criticise the patriotism and wisdom of the American statesmen of that day, the leading figures of our history, the men who bore the brunt of the fight which brought thirteen struggling colonies through a war with one of the mightiest and bravest nations of Europe to the successful issue which made possible the United States of today, with their thirty-eight States, eight Territories, and population of not far from sixty millions. Responsible for the welfare and future of a little republic of some two and a half millions of inhabitants, exhausted by seven years' warfare, and environed on

this continent by the three great monarchies of Europe; their country poor in finance, weak in population, and an object of jealousy and distrust to every sovereign, these eminent men dealt in a spirit of enlightened patriotism and high courage with the political questions presented to them, according to their best and well-trained judgment, in the light of the information they then had. We now, as a judicial body, treat the facts as they are presented in relation to private rights, and no judgment of ours can properly be held, as it has been argued it would be, to reflect in any manner upon the course pursued by the President, his advisers and subordinates, in the anxious period between 1789 and 1800. Upon their diplomatic foresight and ability no decision of ours can cast a shadow, and it must be clearly understood that we deal only with those private rights which may possibly have been invaded in the pursuit of a policy aiming at the life and prosperity of the nation.

The French complained of our course during the war then progressing, while we complained of spoliation and maltreatment of our vessels at sea, losses by the embargo at Bordeaux, non-payment of drafts drawn by the Colonial administration, seizures of cargoes of vessels, non-performance of contracts by Government agents, condemnation of vessels and their cargoes in violation of the treaties of 1778, and captures under the decree of 1793. (Foreign Relations, vol. 1, pp. 748 *et seq.*)

Pinckney was ordered out to replace Monroe under particular instructions to "look into" the claims of our citizens (*ibid.* 742), but before he arrived the decree of October 31, 1796, was made public, which prohibited the importation of manufactured articles, whether of English make or English commerce (6 Garden, 117), and Pinckney upon his arrival was not recognized or received, but ordered to leave France, as that Government would receive no minister from the United States "until after a reparation of the grievances demanded of the American Government, and which the French Republic had a right to expect." (Foreign Relations, vol. 1, p. 746.)

The strained relations between the two countries can not be better illustrated than by an extract from the speech of the president of the Directory made to Monroe, in the presence of the diplomatic corps, when the latter, on the 30th December, 1796, took his official leave. Upon that occasion the president said:

By presenting this day to the Executive Directory your letters of recall you offer a very strange spectacle to Europe. France, rich in her freedom, surrounded by the train of her victories, and strong in the esteem of her allies, will not stoop to calculate the consequences of the condescension of the American Government to the wishes of its ancient tyrants. The French Republic expects, however, that the successors of Columbus, Raleigh, and Penn, always proud of their liberty, will never forget that they owe it to France. They will weigh in their wisdom the magnanimous friendship of the French people with the crafty caresses of perfidious men who mediate to bring them again under their former yoke. Assure the good people of America, Mr. Minister, that, like them, we adore liberty; that they will always possess our esteem, and find in the French people that republican generosity which knows how to grant peace as well as to cause its sovereignty to be respected. (Foreign Relations, vol. 1, p. 747.)

This speech, as President Adams said, discloses sentiments

more alarming than the refusal of a minister, because more dangerous to our independence and union, and at the same time studiously marked with indignities towards the Government of the United States. It evinces a disposition to separate the people of the United States from the Government. . . . Such attempts ought to be repelled with a decision which shall convince France, and the world, that we are not a degraded people, humiliated under a colonial spirit of fear and sense of inferiority, fitted to be the miserable instruments of foreign influence, and regardless of national honor, character, and interest. (Foreign Relations, vol. 1, p. 40.)

The President added that, having no diplomatic representative in France, he had no means of obtaining official information, but believing that a decree had been passed contravening in part the commercial treaty of 1778, he laid a copy of that instrument before the Congress, stating that it was his "indispensable duty to recommend to [their] consideration effectual measures of defense." The Congress were, however, peacefully inclined, although before adjourning they passed the law providing passports for American vessels. (1 Stat. L. 489.)

Soon after the adjournment (June 22) Pinckney, Marshall, and Gerry were commissioned envoys to France for the purpose of endeavoring to renew relations with that country.

Jefferson, then Vice-President, immediately wrote Gerry:

That peace is undoubtedly at present the first object of our nation. Interest and honor are also national considerations. But interest, duly weighed, is in favor of peace, even at the expense of spoliations, past and future, and honor can not now be an object. The insults and injuries committed on us by both the belligerent parties from the beginning of 1793 to this day, and still continuing, can not be wiped off by engaging in war with one of them. Our countrymen have divided themselves by such strong affections to the French and the English that nothing will secure us internally but a divorce from both nations. (Jefferson's Works, vol. 4, p. 187.)

The tone and intent of the instructions to these envoys may be understood from one paragraph in Mr. Pickering's letter to them (Doc. 102, p. 464, July 15, 1797):

Finally, the great object of the Government being to do justice to France and her citizens, if in anything we have injured them. to obtain justice for the multiplied injuries they have committed against us, and to preserve peace, your style and manner of proceeding will be such as shall most directly tend to secure these objects.

The envoys had hardly reached Paris when another decree was aimed against our suffering merchants which prohibited every vessel that had entered an English port from being admitted into any port of the French Republic, and handed over to condemnation every vessel laden in whole or in part with merchandise coming out of England or her possessions. (Doc. 102, p. 483.) The American ministers protested, saying that the decree attacked the interests and independence of neutral powers; that it took from them the profits of an honest and lawful industry, as well as the inestimable privilege of conducting their own affairs as their judgment might direct, and added that acquiescence in it would establish a precedent for national degradation which would authorize any measures power might be disposed to practice. (*Ibid.* 483 *et seq.*)

France leaned to dictation, not negotiation. With Bonaparte successful in Italy and Talleyrand at the head of foreign affairs, she was in a far from conciliatory temper. The result was that, without ever being received officially, the envoys returned, not, however, before Talleyrand had, as a set-off to their demands, presented the counter-claims of France. (Foreign Relations, vol. 2, p. 190.)

During this mission occurred the notorious X. Y. Z. episode, when demands were made upon the ministers by individuals, veiled in the dispatches under these mysterious letters, for a large sum of money as a *douceur* to the Directory and an additional and much larger amount as a loan to France. Talleyrand later, and over his own signature, proposed a loan, omitting reference to the *douceur*, and in the same note complained of the Jay treaty as a principal grievance. The dispatches containing an account of the X. Y. Z. episode coming back from the United States in print, Gerry, the only envoy then remaining, left Paris on the 26th July, 1798. (*Treaties and Conventions*, etc., Bancroft Davis, 997, 998.)

The return of the mission created an effect at home very inimical to France; the President said he would never send another minister without assurances that he would be received, respected, and honored as "the representative of a great, free, powerful, and independent nation" (*Foreign Relations*, vol. 2, p. 199); but, before this (June 21, 1798), Congress had passed the act "to more effectually protect the commerce and coasts of the United States" (May 28, 1798, 1 Stat. L. 561), the act suspending commercial relations with France (June 13, 1798), and various other laws of similar import, which will be considered hereafter in connection with another branch of this case.

Washington was put in command of the army as lieutenant-general and commander-in-chief, and in accepting said (5 *Annals of Cong.*, 622):

The conduct of the Directory of France towards our country; their insidious hostility to its Government; their various practices to withdraw the affections of the people from it; the evident tendency of their acts and those of their agents to countenance and invigorate opposition; their disregard of solemn treaties and the law of nations; their war upon our defenseless commerce; their treatment of our ministers of peace; and their demands, amounting to tribute, could not fail to excite in me corresponding sentiments with those my countrymen have so generally expressed.

This state of affairs could not long continue. Talleyrand, appreciating the dangers of the situation, soon opened indirect communication with the United States, and on the 28th September, said that our plenipotentiary if sent would be "received with the respect due to the representative of a free, independent, and powerful nation." (*Foreign*

Relations, vol. 2, p. 242.) This was an exact compliance with the President's condition precedent, and thereupon Oliver Ellsworth, Chief Justice of the United States, William R. Davie, late governor of North Carolina (Patrick Henry declining to serve), and William Vans Murray, minister resident at The Hague, were commissioned envoys extraordinary and ministers plenipotentiary "to discuss and settle by a treaty all controversies between the United States and France." (*Ibid.* 243.) This mission, appointed in March, 1799, closed its labors by the treaty signed September 30, 1800.

Arriving in France they found the Directory no longer in existence, but treated with Napoleon, then become First Consul. Ministers were appointed to meet them, and the 7th April, 1800, powers were exchanged and negotiations began. (Doc. 102, p. 579.)

The Americans were instructed to inform the French ministers at the opening that we expected, "as an indispensable condition of the treaty," a stipulation to make to our citizens "full compensation for all losses and damage which they shall have sustained by reason of irregular or illegal captures or condemnations of their vessels and other property, under color of authority or commissions from the French Republic or its agents." Other points were urged upon them, but for the purpose of this case it is necessary only to note that they were to obtain a claims commission, to refuse recognition of the treaties of 1778, to refuse a guaranty, to refuse any aid or loan, and to make no engagement contrary to the Jay treaty. (Foreign Relations, vol. 2, p. 306.)

The Secretary of State said, in his instructions:

Instead of relief, instead of justice, instead of indemnity for past wrongs, our very moderate demands have been immediately followed by new aggressions and more extended depredations, while our ministers, seeking redress and reconciliation, have been refused a reception, treated with indignities, and finally driven from its territories. This conduct . . . would well have justified an immediate declaration of war, but . . . the United States contented themselves with preparations for defense, and measures calculated to protect their commerce.

At the close of his instructions the Secretary sets out certain points to be considered as ultimata, of which the following only is now important:

1. That there be established a board to determine the claims of our citizens, which France should bind herself to pay.

Having carried the history of the claims down to this point let us look back upon it and see what rights we had at that time as against France, laying aside for the moment certain defenses set up by the defendants, such as the existence of war and the abrogation of the old treaties. Apart from these points, which have been urged upon us with great ability by the learned counsel for the Government, were the claims at the opening of the negotiations in 1800 valid international obligations against France?

That nation had seized upon the high seas neutral vessels laden with neutral cargo. In the case at bar, for example, the American schooner *Sally*, owned by citizens of the United States, commanded by a citizen of the United States, duly registered under the laws of the United States, bound from Massachusetts to Spain, laden with cargo belonging to American citizens, was seized upon the high seas, taken into a French port, condemned and confiscated for the benefit of the privateer which seized her; and all this, not upon the ground that she had violated the law of nations, but because she had violated the French regulations "concerning the navigation of neutrals." It seems hardly necessary to discuss the proposition that such a proceeding was unwarranted; the French themselves admitted it in their decrees and correspondence; the Russian Czar, in ordering his admiral to pursue a similar course, said it was not "strictly conformable to the natural laws of war." England paid for damages thus committed, as did Spain, which had countenanced the acts of French consuls in condemning American vessels brought into Spanish ports. (Treaty of 1819.)

Senator Livingston, in the Twenty-first Congress, first session, said, in the report made by him:

The committee does not recollect that the justice of the claims has ever been denied. . . . To deny [it] would be assertion of a right on the part of France to indiscriminate plunder of neutral property. . . . But the justice of the claims was not denied, and the necessity of providing indemnity was expressly acknowledged.

This is true as a matter of pure international law; how much more true is it in the face of a treaty which guaranteed the protection to

our vessels (Art. 6) of French ships of war; which made free ships free goods (Art. 23); which prohibited opening hatches or disturbing packages when the vessel had a passport (Arts. 12 and 13); which directed the commanders of French ships to do no "injury or damage" to vessels of the United States (Art. 15); and which contained other provisions insuring an exceptional amount of protection to our commerce and guardianship of our commercial rights?

Mr. Jefferson thought this class of claims valid when he issued his circular of August, 1793, assuring the mercantile community that due attention would be paid to these injuries and proper proceedings adopted for their relief. The President thought them valid when, later in the same year, he wrote to Congress that due measures would be taken to "obtain redress of the past and more effective provisions against the future." Pickering thought them valid when he made their settlement an ultimatum, and the French Government thought them worthy of consideration when they proposed a commission to decide upon them coupled with the counter proposition that the United States indemnify American creditors then existing, or to be created through the agency of this commission, by way of a loan to France, which that country was to be pledged to repay. (Doc. 102, p. 467.)

The defendants contend that the seizures were justified, as war existed between this country and France during the period in question; and, as we could have no claim against France for seizure of private property in time of war, the claimants could have no resulting claim against their own Government; that is, the claims, being invalid, could not form a subject of set-off as it is urged these claims did in the second article of the treaty of 1800. It therefore becomes of great importance to determine whether there was a state of war between the two countries.

It is urged that the political and judicial departments of each Government recognized the other as an enemy; that battles were fought and blood shed on the high seas; that property was captured by each from the other and condemned as prize; that diplomatic and consular intercourse was suspended, and that prisoners had been taken by each Government from the other and "held for exchange, punishment, or retaliation, according to the laws and usages of war." While these statements may be in substance admitted and constitute very strong evidence of the existence of war, still they are not conclusive, and the facts, even if they existed to the extent claimed, may not be incon-

sistent with a state of reprisals straining the relations of the States to their utmost tension, daily threatening hostilities of a more serious nature, but still short of that war which abrogates treaties, and after the conclusion of which the parties must, as between themselves, begin international life anew.

The French issued decree after decree against our peaceful commerce, but on the ground of military necessity incident to the war with Great Britain and her allies; they refused to receive our minister, but in that refusal, insolent though it was, there is nothing to show that war was intended, and the mere refusal to receive a minister does not in itself constitute a ground for hostilities.

The Attorney-General, Mr. Lee, in August, 1798, very strongly sustained the defendants' position, for he wrote the Secretary of State that there existed with France "not only an actual maritime war," but "a maritime war authorized by both nations;" that consequently France was an enemy, to aid and assist whom would be treason on the part of a citizen of the United States; but we can not agree that this extreme position was authorized by the facts or the law.

Congress enacted the various statutes hereinafter referred to in detail, and when one of them, the act providing an additional armament, was passed in the House, Edward Livingston, who opposed it, said:

Let no man flatter himself that the vote which has been given is not a declaration of war. Gentlemen know that this is the case.

Those were times of great excitement; between danger of international contest and the heat of internal partisan conflict statesmen could not look at the situation with the calmness possessed by their successors, and those successors, with some exceptions to be sure, regarded the relations between the countries as not amounting to war.

The question has been carefully examined by authorized and competent officers of the political department of the Government, and we may turn to their statements as expository of the views of that branch upon the subject.

In 1827 Senator Holmes reported that there had been "a partial war," but no "such actual open war as would absolve us from treaty stipulations. . . . It was never understood here that this was such a war as would annul a treaty." (19th Cong., 2d sess., Senate Rep., Feb. 8, 1827, p. 8.)

Mr. Giles, reporting to the House of Representatives as early as 1802, called it a "partial state of hostility" between the United States and France.

Mr. Chambers reported to the Senate in 1828 that—

The relations which existed between the two nations in the interval between the passage of the several acts of Congress before referred to and the convention of 1800 were very peculiar, but in the opinion of your committee can not be considered as placing the two nations in the attitude of a war which would destroy the obligations of previously existing treaties.

Mr. Livingston reported to the Senate in 1830 that—

This was not a case of war, and the stipulations which reconciled the two nations was not a treaty of peace; it was a convention for the putting an end to certain differences. . . . Nowhere is the slightest expression on either side that a state of war existed, which would exonerate either party from the obligations of making those indemnities to the other. . . . The convention which was the result of these negotiations is not only in its form different from a treaty of peace, but it contains stipulations which would be disgraceful to our country on the supposition that it terminated a state of war. . . . Neither party considered then they were in a state of war. (Rep. 4, p. 445.)

Mr. Everett made a statement in the House of Representatives on the 21st February, 1835, in which he said:

The extreme violence of the measures of the French Government and the accumulated injuries heaped upon our citizens would have amply justified the Government of the United States in a recourse to war; but peaceful remedies and measures of defense were preferred; [and, after referring to the acts of Congress, he adds:] These vigorous acts of defense and preparation, evincing that, if necessary, the United States were determined to proceed still further and go to war for the protection of their citizens, had the happy effect of precluding a resort to that extreme measure of redress.

Finally, Mr. Sumner considered the acts of Congress as "vigorous measures," putting the country "in an attitude of defense;" and that the "painful condition of things, though naturally causing great

anxiety, did not constitute war." (38th Cong., 1st sess., Rep. 41, 1864.)

The judiciary also had occasion to consider the situation, and the learned counsel for defendants cites us to the opinion of Mr. Justice Moore delivered in the case of *Bas v. Tingy* (4 Dall. 37), wherein the facts were as follows: Tingy, commander of the public armed ship the *Ganges*, had libelled the American ship *Eliza*, Bas, master, setting forth that she had been taken on the high seas by a French privateer the 31st March, 1799 and retaken by him late in the following April, wherefore salvage was claimed and allowed below. Upon appeal the judgment was affirmed. Each of the four justices present delivered an opinion.

Justice Moore, answering the contention that the word "enemy" could not be applied to the French, says:

How can the characters of the parties engaged in hostility or war be otherwise described than by the denomination of enemies? It is for the honor and dignity of both nations, therefore, they should be called enemies; for it is by that description alone that either could justify or excuse the scene of bloodshed, depredation, and confiscation which has unhappily occurred, and surely Congress could only employ the language of the act of June 13, 1798, towards a nation whom she considered as an enemy.

Justice Washington considers the very point now in dispute, saying (p. 40):

The decision of this question must depend upon . . . whether at the time of passing the act of Congress of the 2d of March, 1799, there subsisted a state of war between two nations. It may, I believe, be safely laid down that every contention by force between two nations, in external matters, under the authority of their respective Governments, is not only war, but public war. If it be declared in form it is called solemn and is of the perfect kind, because one whole nation is at war with another whole nation, and all the members of the nation declaring war are authorized to commit hostilities against all the members of the other in every place and under every circumstance. In such a war all the members act under a general authority, and all the rights and consequences of war attach to their condition. But hostilities may subsist between two nations more confined in its nature and extent, being limited as to places, persons, and things, and this is more properly termed imperfect war, because not solemn, and because those who are authorized to commit hostilities act under

special authority and can go no further than to the extent of their commission. Still, however, it is public war, because it is an external contention by force between some of the members of the two nations, authorized by the legitimate powers. It is a war between the two nations, though all the members are not authorized to commit hostilities such as in a solemn war where the Government retains the general power.

Applying this rule he held that "an American and French armed vessel, combating on the high seas, were enemies," but added that France was not styled "an enemy" in the statutes, because "the degree of hostility meant to be carried on was sufficiently described without declaring war, or declaring that we were at war. Such a declaration by Congress might have constituted a perfect state of war which was not intended by the Government."

Justice Chase, who had tried the case below, said:

It is a limited, partial war. Congress has not declared war in general terms, but Congress has authorized hostilities on the high seas by certain persons in certain cases. There is no authority given to commit hostilities on land, to capture unarmed French vessels, nor even to capture French armed vessels in a French port, and the authority is not given indiscriminately to every citizen of America against every citizen of France, but only to citizens appointed by commissions or exposed to immediate outrage and violence. . . . If Congress had chosen to declare a general war, France would have been a general enemy; having chosen to wage a partial war, France was . . . only a partial enemy.

Justice Paterson concurred, holding that the United States and France were "in a qualified state of hostility"—war "*quoad hoc*." As far as Congress tolerated and authorized it, so far might we proceed in hostile operations and the word "enemy" proceeds the full length of this qualified war, and no further.

The Supreme Court, therefore, held the state of affairs now under discussion to constitute partial warfare, limited by the acts of Congress.

The instructions to Ellsworth, Davie, and Murray, dated October 22, 1799, did not recognize a state of war as existing, or as having existed, for they said the conduct of France would have justified an immediate declaration of war, but the United States, desirous of maintaining peace, contented themselves "with preparations for defense and measures calculated to defend their commerce." (Doc. 102, p.

561.) Yet all the measures relied upon as evidence of existing war had taken effect prior to the date of these instructions. So the ministers, in a communication to the French authorities, said, as to the acts of Congress, "which the hard alternative of abandoning their commerce to ruin imposed," that "far from contemplating a cooperation with the enemies of the Republic [they] did not even authorize reprisals upon her merchantmen, but were restricted simply to the giving of safety to their own, till a moment should arrive when their sufferings could be heard and redressed." (Doc. 102, p. 583.)

France did not consider that war existed, for her minister said that the suspensions of his functions was not to be regarded as a rupture between the countries, "but as a mark of just discontent" (15 Nov., 1796, Foreign Relations, vol. 1, p. 583), while J. Bonaparte and his colleagues termed it a "transient misunderstanding" (Doc. 102, p. 590), a state of "misunderstanding" which had existed "through the acts of some agents rather than by the will of the respective 'Governments,'" and which had not been a state of war, at least on the side of France. (*Ibid.* 616.)

The opinion of Congress at the time is best gleaned from the laws which it passed. The important statute in this connection is that of May 28, 1798 (1 Stat. L. 561) entitled "An act more effectually to protect the commerce and coasts of the United States." Certainly there was nothing aggressive or warlike in this title.

The act recites that, whereas French armed vessels have committed depredations on American commerce in violation of the law of nations and treaties between the United States and France, the President is authorized—not to declare war, but to direct naval commanders to bring into our ports, to be proceeded against according to the law of nations, any such vessels "which shall have committed, or which shall be found hovering on the coasts of the United States for the purpose of committing, depredations on the vessels belonging to the citizens thereof; and also to retake any ship or vessel of any citizen or citizens of the United States which may have been captured by any such armed vessel."

This law contains no declaration or threat of war; it is distinctly an act to protect our coasts and commerce. It says that our vessels may arrest a vessel raiding or intending to raid upon that commerce, and that such vessel shall not be either held by executive authority or confiscated, but turned over to the admiralty courts—recognized inter-

national tribunals—for trial, not according to municipal statutes, as was being done in France, but according to the law of nations. Such a statute hardly seems necessary, for if it extended at all the police powers of naval commanders upon the high seas it was in the very slightest degree, and it is highly improbable that then or now, with or without specific statutory or other authority, an American naval commander would in fact allow a vessel rightfully flying the flag of the United States to be seized on the high seas or near our coasts by the cruiser of another Government. But if the act did enlarge the power of such officers, and give to them authority not theretofore possessed, it tied them down to specified action in regard to specified vessels.

They might seize armed vessels only, and only those armed vessels which had already committed depredations, or those which were on our coast for the purpose of committing depredations; and they might retake an American vessel captured by such an armed vessel. This statute is a fair illustration of the class of laws enacted at this time; they directed suspension of commercial relations until the end of the next session of Congress, not indefinitely (June 13, 1798, *ibid.*, § 4, p. 566); they gave power to the President to apprehend the subjects of hostile nations whenever he should make "public proclamation" of war (July 6, 1798, *ibid.* 577), and no such proclamation was made; they gave him authority to instruct our armed vessels to seize French "armed," not merchant, vessels (July 9, 1798, *ibid.* 578), together with contingent authority to augment the army in case war should break out or in case of imminent danger of invasion. (March 2, 1799, *ibid.* 725.) Within a few months after this last act of Congress the Ellsworth mission was on its way to France to begin the negotiations which resulted in the treaty of 1800 and even the act abrogating the treaties of 1778 does not speak of war as existing, but of "the system of predatory violence . . . hostile to the rights of a free and independent nation." (July 7, 1798, *ibid.* 578.)

If war existed why authorize our armed vessels to seize French armed vessels? War itself gave that right, as well as the right to seize merchantmen, which the statutes did not permit. If war existed why empower the President to apprehend foreign enemies? War itself placed that duty upon him as a necessary and inherent incident of military command. Why, if there was war, should a suspension of commercial intercourse be authorized, for what more complete suspension of that intercourse could there be than the very fact of war?

And why, if war did exist, should the President, so late as March, 1799, be empowered to increase the army upon one of two conditions, viz., that war should break out or invasion be imminent, that is, if war should break out in the future or invasion become imminent in the future?

Upon these acts of Congress alone it seems difficult to found a state of war up to March, 1799, while in February, 1800, we find a statute suspending enlistments, unless, during the recess of Congress, "war should break out with France." This is proof positive that Congress did not then consider war as existing, and in fact Ellsworth, Davie, and Murray were at the time hard at work in Paris. In May following the President was instructed to suspend action under the act providing for military organization, although the treaty was not concluded until the following September.

This legislation shows that war was imminent; that protection of our commerce was ordered, but distinctly shows that, in the opinion of the legislature, war did not in fact exist.

Wheaton draws a distinction between two classes of war, saying:

A perfect war is where one whole nation is at war with another nation, and all the members of both nations are authorized to commit hostilities against all the members of the other, in every case, and under every circumstance permitted by the general laws of war. An imperfect war is limited as to places, persons, and things [to which the editor adds:] Such were the limited hostilities authorized by the United States against France in 1798. (Lawrence's Wheaton, 518.)

There was no declaration of war; the tribunals of each country were open to the other—an impossibility were war in progress; diplomatic and commercial intercourse were admittedly suspended; but during many years there was no intercourse between England and Mexico, which were not at war; there was retaliation and reprisal, but such retaliations and reprisals have often occurred between nations at peace; there was a near approach to war, but at no time was one of the nations turned into an enemy of the other in such manner that every citizen of the one became the enemy of every citizen of the other; finally, there was not that kind of war which abrogated treaties and wiped out, at least temporarily, all pending rights and contracts, individual and national.

In cases like this "the judicial is bound to follow the action of the political department of the Government, and is concluded by it" (*Phillips v. Payne*, 92 U. S. 130); and we do not find an act of Congress or of the Executive between the years 1793 and 1801 which recognizes an existing state of solemn war, although we find statutory provisions authorizing a certain course "in the event of a declaration of war," or "whenever there shall be a declared war," or during the existing "differences." One act provides for an increase of the army "in case war shall break out," while another restrains this increase "unless war shall break out." (1 Stat. L. 558, 577, 725, 750; see also acts of Feb. 10, 1800, and May 14, 1800.)

We have already referred to the instructions of the Executive, which show that branch of the Government in thorough accord with the legislative on this subject, and the negotiations of our representatives hereinafter referred to were marked by the same views, while the treaty itself—a treaty of amity and commerce of limited duration—is strong proof that what were called "differences" did not amount to war. We are, therefore, of opinion that no such war existed as operated to abrogate treaties, to suspend private rights, or to authorize indiscriminate seizures and condemnations; that, in short, there was no public general war, but limited war in its nature similar to a prolonged series of reprisals.

The general effect and purpose of the treaty of 1800 can be clearly gleaned from the negotiations preceding its signature, which will next be considered.

The treaties of 1778 provided that French men-of-war should protect our vessels and citizens (Treaty of Commerce, Art. 6); that our merchantmen having passports and certificates showing their cargoes not to be contraband should not have their hatches opened, their packages disturbed, or the "smallest parcels of goods" removed (Arts. 12 and 13); that a French man-of-war meeting an American merchantman should remain out of cannon-shot, and send on board not more than three men, when, should the merchantman have a passport, he might proceed (Art. 27); freedom of trade was secured and contraband defined.

Soon after the French revolution the series of attacks upon our commerce began, at first veiled under the excuse of mistake, then of a necessary self-defense, coupled with promise of compensation, and

finally open and undisguised. First it was said that the seizures were accidental, as the two English-speaking nations could not be distinguished by the French sailors; soon after all neutral vessels laden with provisions and bound to an enemy's port were ordered seized as a war measure, but compensation was promised; and it was then that the President and Secretary of State, having already issued the proclamation of neutrality, which greatly incensed France, voluntarily promised protection and redress to citizens of the United States thus injured by our former ally. At this point, therefore, we have on both sides an admission of the validity of claims arising from the spoiliations--the President, in the proclamation and circular letter, the French, in their decrees, as well as in a letter to the Secretary of State (March 27, 1794), in which the French minister wrote that "If any of your merchants have suffered any injury by the conduct of our privateers . . . they may with confidence address themselves to the French Government." (Doc. 102, p. 264.) Nearly four months later the French commissioner of foreign relations informed our minister that there should not be a doubt of the disposition of the convention and Government to "make good the losses which circumstances inseparable from a great revolution may have caused some American navigators to experience." (July 5, 1794; *ibid.* 77.) Then came Genet's dismissal: Jay was sent to England, and Monroe, succeeding Morris, seemed to have progressed so successfully that Washington announced to Congress (Feb. 20, 1795), "that these claims are in a train of being discussed with candor, and amicably adjusted." (Wait's American State Papers, vol. 3, p. 402.)

The Jay treaty entirely changed the situation; France violently remonstrated, treated Monroe with insult, refused to receive Pinckney, threw off the last restraints upon its cruisers and privateers, and its colonial agents joined with so much vigor in the illegal attack upon a peaceful neutral commerce, that "American vessels no longer entered the French ports unless carried in by force." (Doc. 102, pp. 434, 435.)

Just complaint was not, however, confined to one side, for we had failed in performance of obligations imposed upon us by the treaties of 1778. We had undertaken a guaranty of French possessions in America, and pledged ourselves that "in case of a rupture between France and England the reciprocal guaranty . . . shall have its full force and effect the moment such war shall break out." (Art. 12,

Treaty of Alliance.) This guaranty was to endure "forever." It was contended by us that the *casus faderis* could never occur except in a defensive war. As Secretary Pickering said:

The nature of this obligation is understood to be that when a war really and truly defensive exists the engaging nation is bound to furnish an effectual and adequate defense, in cooperation with the power attacked. (Doc. 102, p. 457, *Pickering to Pinckney et al.*, July 15, 1797.)

Whether the treaty so limited the obligation, or whether France in her struggle with the allied powers was waging a defensive war, is not now important. France certainly believed herself entitled to demand our aid, and understood the *casus faderis* to have occurred.

At the opening of the war France possessed the fertile islands of St. Domingo, Martinique, Guadeloupe, St. Lucia, St. Vincent, Tobago, Deseada, Mariegalante, St. Pierre, Miquelon, and Grenada, with a colony on the mainland at Cayenne, and "in little more than a month the French were entirely dispossessed of their West India possessions, with hardly any loss to the victorious nation." (Alison's History, vol. 3, p. 396.)

The French colonists urged us to intervene, but the French Government thought it wiser for us not then to embark in the war, as it might diminish their supplies from America; they would, however, they said, leave us to act according to our wishes, looking to us meantime for financial aid. (Foreign Relations, vol. 1, p. 688.) This was not a renunciation of the guaranty, nor was it so regarded here.

A study of the correspondence shows that these provisions of the two treaties, especially the guaranty, constantly hampered our ministers, and Jefferson said he had no doubt "we should interpose at the proper time" (Jefferson's Works, vol. 4, p. 102), while the French Government dwelt upon the "inexecution of the treaties" (Foreign Relations, vol. 1, p. 658), said "they had much cause of complaint against us" (*ibid.* 731), and finally refused to receive Pinckney "until after a reparation of grievances," while their minister here demanded "in the name of American honor, in the name of the faith of the treaties, the execution of that contract which assured to the United States their existence and which France regarded as the pledge of the most sacred union between two people, the freest upon earth." (Foreign Affairs, vol. 1, pp. 579 *et seq.*)

The claims of France, national in their nature, were thus set up again against the claims of the United States, individual in their inception, but made national by their presentation through the diplomatic department of the Government.

It is not for us to say whether the claims of France had any validity in international law, because for the purpose of this case it need only be observed that they were urged in diplomacy with every apparent belief that the French position was tenable. Whether valid or not they were an efficient arm of defense against our contentions, and were so used with ability, skill, and success. In fact there is a recognition of apparent justness in these demands found in the instructions to the Pinckney mission, who were directed while urging our claims to propose a substitute for the mutual guaranty "or some modification of it," as "instead of troops or ships of war" "to stipulate for a moderate sum of money or quantity of provisions," to be delivered in any future defensive war "not exceeding \$200,000 a year during any such war" (Foreign Relations, vol. 2, p. 155), and Talleyrand, on the other side, told Mr. Gerry (June 15) that the Republic desired to be restored to the rights which the treaties conferred upon it, and through these means to assure the rights of the United States. "You claim indemnities," he said; we "equally demand them, and this disposition being as sincere on the part of the United States as it is on its [the Republic], will speedily remove all the difficulties." (Doc. 102, p. 529.)

Such was the situation when the Ellsworth mission arrived in France.

The instructions to this legation directed them as an "indispensable condition" to obtain full compensation for all losses and damages sustained by citizens of the United States from irregular or illegal captures or condemnations.

The French representatives did not dispute the validity of the claims, but stood upon the treaties of 1778. To their opening propositions the American envoys received a courteous response, which, however, put a new phase upon the negotiation, and placed them in a most embarrassing position. Bonaparte and his colleagues said in substance (6 May, 1800, Doc. 102, p. 590): The discharge of damages between the two nations resulting from the "transient misunderstanding" can be "considered only as a consequence of the interpretation" given by mutual consent to the treaties. They agreed "upon the expediency of compensation," and suggested that the discussion had become confined to two points, the principles which ought to govern the political

and commercial relations of the two countries and the most suitable form for liquidating and discharging the indemnities due. The examination of principles should come first in order, they said, for "indemnification can only result from an avowed violation of an acknowledged obligation," and an "agreement upon principles can alone assure peace and maintain friendship." The French ministers then, alluding to the treaties, referred to the second article of the draft submitted by the Americans, which provided that the commission suggested should decide claims "conformably to justice and the law of nations, and in all cases of complaint prior to the 7th of July, 1798, they should pronounce agreeably to the treaties and consular convention then existing between France and the United States." Now this second article of the draft applied only to claims of citizens of each country, while July 7, 1798, was the date of the act of Congress annulling the treaties; but the French ministers ignoring this said that they saw no reasons for the distinction, as the treaties and convention are "the only foundations of the negotiations;" that from them arose the misunderstanding, and upon them "union and friendship should be established"; and they thus significantly concluded: "When the undersigned hastened to acknowledge the principle of compensation, it was in order to give an unequivocal evidence of the fidelity of the French Government to its ancient engagements, every pecuniary stipulation appearing to it expedient as a consequence of ancient treaties, and not as the preliminary of a new one." So the French were planted squarely on the treaties which the Americans were forbidden to consider as existing after July, 1798. Two days later our ministers explained their position (*ibid.* 592), and nine days later wrote to the Secretary of State (*ibid.* 607) that their success was still doubtful, as the "French think it hard to indemnify for violating engagements unless they can thereby be restored to the benefits of them." Soon followed a conference between the plenipotentiaries, when the negotiations were brought to a halt, as no further progress could be had until other "powers" or "instructions" for the two words seem to have been used synonymously, were received from the First Consul.

The French ministers had frequently mentioned the insuperable repugnance of their Government to surrender the claim to priority assured to it in the "commercial treaty of 1778," urging:

The equivalent alleged to be accorded by France for this stipulation, the meritorious ground on which they generally represented

the treaty stood, denying strenuously the power of the American Government to annul the treaties by a simple legislative act; and always concluding that it was perfectly incompatible with the honor and dignity of France to assent to the extinction of a right in favor of an enemy, and as much so to appear to acquiesce in the establishment of that right in favor of Great Britain. The priority with respect to the right of asylum for privateers and prizes was the only point in the old treaty on which they had anxiously insisted, and which they agreed could not be as well provided for by a new stipulation. (Doc. 102, p. 608.)

The American envoys (July 23, 1800), in answer to the French arguments, reducing to writing the substance of two conferences, said (Doc. 102, p. 612):

As to the proposition of placing France with respect to an asylum for privateers and prizes, upon the footing of equality with Great Britain, it was remarked that the right which had accrued to Great Britain in that respect was that of an asylum for her own privateers and prizes, to the exclusion of her enemies, wherefore it was physically impossible that her enemies should at the same time have a similar right. With regard to the observation that by the terms of the British treaty the rights of France were reserved, and therefore the rights of Great Britain existed with such limitation as would admit of both nations being placed on a footing which should be equal, it was observed by the envoys of the United States that the saving in the British treaty was only of the rights of France resulting from her then existing treaty, and that that treaty having ceased to exist, the saving necessarily ceased also, and the rights which before that event were only contingent immediately attached and became operative.

Admission of the continuing force of the old treaties might involve admission of France's national claims, and in any event would put her ministers into a most advantageous position, giving them as consideration, to be surrendered at their pleasure in the new negotiation, what would then be a vested, existing, and acknowledged right to the guarantee, the alliance, and the use of our ports. Placed in this position, France would be without incentive to action; she would start in the discussion of a new treaty with more surrendered to her at the outset than she had hoped to obtain at the conclusion, and all that she afterward gave up would be by way of generous concession. What-

ever the law, whether the treaties were or were not abrogated by the act of Congress or the acts of parties, the American envoys were not permitted to admit the French contention, but were in duty bound to argue that the treaties were without continuing force. They followed this course, saying:

A treaty being a mutual compact, a palpable violation of it by one party did, by the law of nature and of nations, leave it optional with the other to renounce and declare the same to be no longer obligatory. . . . The remaining party must decide whether there had been such violation on the other part as to justify its renunciation. For a wrong decision it would doubtless be responsible to the injured party, and might give cause for war; but even in such case, its act of public renunciation being an act within its competence would not be a void but a valid act, and other nations whose rights might thereby be beneficially affected would so regard it. (Doc. 102, p. 612.)

After further argument, they added that as it was the opinion of the French ministers that "it did not comport with the honor of France" to admit the American contentions, and at the same time be called upon for compensation, they offered "as their last effort" a proposition which suspended payment of compensation for spoliations "until France could be put into complete possession of the privileges she contended for, and at the same time they offered to give that security which a great pecuniary pledge would amount to for her having the privilege as soon as it could be given with good faith, which might perhaps be in a little more than two years; at any rate within seven." (*Ibid.* 613.)

The French answered (Doc. 102, p. 615) that they still found no reason to consider the treaties of 1778 as broken; the act of 1798, being that of one party, could not destroy, they said, "otherwise than by war and victory," that which was the engagement of two. After some further argument they wrote that they would not push further their observations, as—

Those which they have repeated suffice to establish the rights of France, and to her the honor of a sacrifice which she would make in renouncing the exclusive right of entry into the ports of America for French privateers accompanied with their prizes. (*Ibid.* 615.)

As to the proposal of a money indemnity for delay they said:

The proposition of the American ministers offers to the Republic at a distant time the hope of exclusive advantages, and for the present, and, perhaps, for seven years, an humiliating forfeiture of those rights, and a shameful inferiority with regard to a state [Great Britain] over which she had acquired these privileges by the services she had rendered to America when it made war with such state. When the ministers of France can subscribe to a condition unworthy the French nation, the price which they would put upon their humiliation would it not be the continuance of a subjection, which they consider to be contrary to the interest of the United States? The dependence of her ally can not be for her an indemnity for a national suffering. The French ministers believing it to be their duty to insist with their Government upon the immediate renunciation of a privilege well acquired, it would be contradictory that they should provide for its return at a distant time. (*Ibid.* 615, 616.)

Some two weeks later the French again insisted that the treaties were not broken by the state of "misunderstanding" which had existed "through the acts of some agents rather than by the will of the respective Governments," and which had not been a state of war, at least on the side of France. (*Ibid.* 616.) Yet, after this opening, the ministers use language in apparent antagonism with the position thus and before advanced that the treaties were still existent; their tone toward the United States is marked by extreme bitterness, but they finish by consenting to an abolition of the treaties and the conclusion of a new one. The alternative proposition is thus put:

Either the ancient treaties, with the privileges resulting from priority and the stipulation of reciprocal indemnities, or a new treaty, assuring equality without indemnity. (*Ibid.* 618.)

To the first of these proposals our ministers were forbidden to assent, as it involved an admission of the continuing force of the treaties; to the second they could not assent, for their first duty was to obtain indemnity. The time had come when they must go beyond their instructions and assume personal responsibility. (Doc. 102, pp. 619, 620.)

In August, after some delay and apparent friction, the Americans, saying that "while nothing would be more grateful to America than

to acquit herself of any just claims of France, nothing could be more vain than an attempt to discourse to her reasons for the rejection of her own," made the following propositions (*ibid.* 623-625):

- (1) Let it be declared that the former treaties are renewed and confirmed and shall have the same effect as if no misunderstanding between the two powers had intervened, except so far as they are derogated from by the present treaty.
- (2) It shall be optional with either party to pay to the other within seven years 3,000,000 of francs in money or securities which may be issued for indemnities, and thereby to reduce the rights of the other as to privateers and prizes to those of the most favored nation. And during the said term allowed for option the right of both parties shall be limited by the line of the most favored nation.

The third proposition looked to such modification of the mutual guaranty that military stores should be furnished by the one party to the value of 1,000,000 francs to the other when attacked, but either might within the seven years pay the lump sum of 5,000,000 francs to be freed from the obligation. The fifth proposition provided indemnities for individuals, and that "public ships taken on either side [should] be restored or paid for," and the sixth that all property seized by either party and not yet "definitively condemned" should be restored on reasonable proof of it belonging to the other. So they finally agreed to recognize the existence of the treaties, the right of France to the guaranty and exclusive port privileges, and proposed to pay a lump sum to be free of their obligation in the future, for the propositions on this subject, while on their face mutual, were in effect for the benefit of the United States alone, France much preferring to revert to the *statu quo*.

Later during the negotiations an offer was made by us "to extinguish by an equivalent of 8,000,000 francs certain claims of France under the former treaties" (*ibid.* 626, 629); but even after all these concessions there was still no satisfactory promise of a result, although the existence of the treaties had in effect been recognized and "indemnity on either side in substance agreed to." The French now made a counter proposition continuing "the ancient treaties" "as if no misunderstanding had occurred," providing commissioners "to liquidate the respective losses," amending the article as to the use of ports by privateers, which was naturally a capital subject of differ-

ence, and providing that if after seven years the seventeenth and twenty-second articles of the treaty of commerce were not reestablished no indemnities should be paid, and, further, that the guaranty be converted into a "grant of succor for two millions" redeemable by a capital sum of ten millions. (*Ibid.* 627, 628.)

The Americans made a counter proposal, renewing their offer of 8,000,000 francs to be paid within seven years in consideration that the United States "be forever exonerated of the obligation, on their part, to furnish succor or aid under the mutual guaranty," and that the rights of the French Republic be forever limited to those of the most favored nation. (*Ibid.* 629.) To this the French tersely answered (*ibid.* 630):

We shall have the right to take our prizes into your ports; a commission shall regulate the indemnities owed by either nation to the citizens of the other; the indemnities which shall be due by France to the citizens of the United States shall be paid for by the United States; in return for which France yields the exclusive privileges resulting from the seventeenth and twenty-second articles of the treaty of commerce and "from the rights of the guaranty of the eleventh article of the treaty of alliance."

Matters now again reached a halting point; neither side would yield; France acknowledged her real object to be to avoid payment of indemnity, while the United States, on the other hand, could not assent to her views as to the guaranty and use of ports. In considerable heat the ministers parted. (*Ibid.* 632, 633.) The next day the Americans made another effort, because, as they wrote in their journal (*ibid.* 634), "being now convinced that the door was perfectly closed against all hope of obtaining indemnities with any modifications of the treaty, it only remained to be determined whether, under all circumstances, it would not be expedient to attempt a temporary arrangement which would extricate the United States from the war or that peculiar state of hostility in which they are at present involved, save the immense property of our citizens, now pending before the council of prizes, and secure, as far as possible, our commerce against the abuses of capture during the present war;" therefore they proposed (*ibid.* 635) that as to the treaties and indemnities, the question should be left open; that intercourse should be free; then, with suggestions as to property captured and not definitively condemned and property

which might thereafter be captured, they asked an early interview.

The French still insisted that a stipulation of indemnities involved an admission of the force of the treaties (*ibid.* 635-637), and after argument proposed that the discussion of the indemnities, together with the discussion of article 11 of the treaty of alliance and articles 17 and 22 of the treaty of commerce, be postponed, but with the admission that the two treaties are "acknowledged and confirmed . . . as well as the consular convention of 1788;" that national ships and privateers be treated as those of the most favored nation; that national ships be restored and paid for, and that the "property of individuals not yet tried shall be so according to the treaty of amity and commerce of 1778, in consequence of which a *rôle d'équipage* shall not be exacted, nor any other proof which this treaty could not exact." So, after months of negotiation, the French ministers come back flat-footed upon the treaties as still existing, something which our representatives were forbidden by their instructions to admit. Nevertheless this proposal formed the text for discussion, and upon so slight a foundation was built the treaty of 1800.

After prolonged negotiation, and after striking out the word "provisional" in the name or description of the new treaty, the American commissioners signed it, although with great reluctance, "because they were profoundly convinced that, considering the relations of the two countries politically, the nature of our demands, the state of France, and the state of things in Europe, it was [their] duty, and for the honor and interest of the Government and people of the United States, that [they] should agree to the treaty rather than make none." (*Ibid.* 640.)

The vital effect of this negotiation as explanatory of the treaty of 1800, upon which the rights of these claimants are founded, explains the rehearsal of its details during which the so-called ultimatum of our Government was abandoned and the contention of the French Government as to the existence of the treaties was admitted.

Starting under their instructions, events had forced the ministers to offer unlimited recognition of the treaties of 1778, coupled with a pecuniary equivalent to extinguish in the future their most onerous provisions (*ibid.* 643); even this was not accepted, and the French, returning to their original ground, said that no indemnity could be granted unless the treaties were recognized without qualification as to the future, and this, they said, with the avowed object of avoiding

the payment of indemnity. (*Ibid.*) The American ministers had then but two courses open to them, either to quit France, leaving the United States involved in a dangerous contest, or to propose a temporary arrangement, reserving for later adjustment points which could not then be satisfactorily settled. (*Ibid.* 644.) They elected the latter course, and the treaty signed at Paris the 30th day of September, 1800, by Ellsworth, Davie, and Murray, on the one hand, and J. Bonaparte, Fleurieu, and Roederer, on the other, became part of the supreme law of the land, and was so proclaimed by the President the 21st day of December, 1801.

But between its signature and proclamation a very important history intervened, one extremely interesting to the claimants at this bar, and which has been the cause of much argument and contention.

The compromise by our ministers, to which they were forced by the position of the French Government, was contained in the second article, which read:

The ministers plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time, and until they may have agreed upon these points the said treaties and conventions shall have no operation, and the relations of the two countries shall be regulated as follows.

It is apparent that this article makes the treaty temporary and provisional in its nature; it admits that the existence or non-existence of the treaties of 1778, with the liabilities thereby imposed, is open to discussion, and that the indemnities are not provided for; that is, that the very first of the so-called "ultimata" of Secretary Pickering is temporarily abandoned. The Senate advised and consented to the ratification of the treaty provided this article be expunged, and in its place the following article be inserted:

It is agreed that the present convention shall be in force for the term of eight years from the time of exchange of ratifications.

Napoleon thereupon consented (July 31, 1801), "to accept, ratify, and confirm" the convention, with an addition importing that it shall

be in force for the space of eight years, and with the retrenchment of the second article:

Provided, That by this retrenchment the two states renounce the respective pretensions which are the object of the said article.

The ratifications were exchanged in Paris, July 31, 1801. The treaty, with its addenda, was again submitted to the Senate, and in that form received the approval of that body (December 19, 1801), when it declared that it considered the convention "fully ratified," and returned it to the President for promulgation.

What the respective pretensions were which were the subject of the second article does not admit of a shadow of doubt: on the one hand, the alleged continuing existence of the treaties incidentally involving national claims for past acts on our part and more particularly a right to future privileges; on the other hand, indemnity to our citizens for spoliations.

Our claims were good by the law of nations, and we had no need to turn back to the treaties for a foundation upon which to rest our arguments. Not so with France. Her national claims must necessarily rest on treaty provisions, and the future privileges she desired above all else could in no way be so easily or fully secured as by an admission of the continuing force of those instruments. She therefore insisted that for indemnity we must give treaty recognition. This we absolutely refused to do, and upon this rock twice did the negotiations split, only to be renewed by the patience and patriotism of our ministers. After months of weary discussion the parties stood as to this point exactly where they started, and to save their young and struggling country from further contest the American ministers consented to the compromise. Then the Senate struck the compromise out, and France said in effect, "Yes, we agree, if it is understood that we mutually renounce the pretensions which are the subject of that article," to which the Senate and the President, by their official action, assented.

So died the treaties of 1778, with all the obligations which they imposed, and with them passed from the field of international contention the claims of American citizens for French spoliation.

In this whole transaction the treaties were urged on the one side against indemnities on the other. Admission of the continuing force

of the treaties was the great desire of France to which she subordinated all else, even her national claims; on the other hand, the United States could by no possibility admit such a contention, for to do so would set them instantly at odds with their former enemy. Having given, in 1794, to Great Britain the exclusive port privileges secured to France in 1778, they could not in 1800 again reverse their policy, and, by returning these privileges to France, infringe their agreement with Great Britain.

Yet this was the issue, an issue never retreated from by the French; as they put it, "either the ancient treaties with indemnity [for spoliations] or a new treaty without indemnity." Article 2 of the treaty of 1800 still presents these counter propositions linked together when it postpones the discussion of the treaties, and at the same time postpones the discussion of the indemnities.

When the United States struck out that second article and assented to Napoleon's proviso that by so doing both states renounced the pretensions which were its object (that is, the treaties and these claims), the contract was complete. That there was a "bargain," to use Madison's word, is apparent from the instrument and the negotiations which have been recited as preceding it.

Four years later Mr. Madison, then Secretary of State, instructed Mr. Pinckney, minister in Spain, that "the claims from which France was released were admitted by France, and the release was for a valuable consideration in a correspondent release of the United States from certain claims on them. The claims we make on Spain were never admitted by France nor made on France by the United States. They made, therefore, no part of the bargain with her, and could not be included in the release."

The counsel for defendants contends that Mr. Madison referred in this letter to "national" claims on the part of the United States for national injury, in the destruction of commerce, the increased cost of the Army and Navy, and the insult to the flag. It should be noted, in answer to this position, that the claims against Spain, then under discussion, were exactly these claims now at bar, except that Spain was the party defendant instead of France. As against France captures made by French privateers under French decrees were taken into French ports, and there condemned. As against Spain captures made by French privateers under French decrees were taken into Spanish ports and there condemned by French consuls under the

authority and protection of Spain. Spain plead that these claims were settled by the second article of the treaty of 1800, and it was in answer to this plea that Mr. Madison wrote his letter.

The subject-matter of the instruction to Pinckney was these claims and nothing else, for we were not urging "national" claims on Spain, but the claims subsequently described in the Spanish treaty as those "on account of prizes made by French privateers and condemned by French consuls within the territory and jurisdiction of Spain." (Treaty of 1819, Art. 9.) These claims were finally recognized, and paid through the Florida purchase. (*Id.*, Art. 11; see also treaty of 1802.)

But the negotiations of the Ellsworth mission are conclusive that the claims were not "national" in the sense of governmental as opposed to individual. It is unnecessary to repeat extracts from the correspondence already given, and we need only refer to the project submitted by our ministers, the 18th of April, 1800, which describes the claims as those "of divers merchants and other citizens of the United States" (Doc. 102, pp. 585-589), thus following their instructions, which called them "claims of our citizens." (*Ibid.* 575.)

Mr. Pickering, Secretary of State under the first two Presidents, and who, above all others, was familiar with the situation and with the rights of the parties, said that we bartered "the just claims of our merchants" to obtain a relinquishment of the French demand, and that—

It would seem that the merchants have an equitable claim for indemnity from the United States. . . . The relinquishment by our Government having been made in consideration that the French Government relinquish its demands for a renewal of the old treaties, then it seems clear that, as our Government applied the merchants' property to buy off those old treaties, the sums so applied should be reimbursed. (Mr. Clayton's speech, 1846.)

Mr. Madison, as we have seen, said to Spain that the claims were admitted by France, and were released "for a valuable consideration," and he termed the transaction a "bargain."

Mr. Clay, in the Meade Case, in which his opinion was given in 1821, five years prior to his report upon French spoliations, said that while a country might not be bound to go to war in support of the rights of its citizens, and while a treaty extinction of those rights is probably binding, it appears—

That the rule of equity furnished by our Constitution, and which provides that private property shall not be taken for public use without just compensation, applies and entitles the injured citizen to consider his own country a substitute for the foreign power.

In this conclusion Chief Justice Marshall strongly concurred, saying to Mr. Preston—

Having been connected with the events of the period and conversant with the circumstances under which the claims arose, he was, from his own knowledge, satisfied that there was the strongest obligation on the Government to compensate the sufferers by the French spoliations. (Clayton's speech, 1846.)

And he repeated to Mr. Leigh distinctly and positively "that the United States ought to make payment of these claims."

This view of the distinguished jurist and diplomatist is sustained by forty-five reports favorable to the claims, made in the Congress, against which stand but three adverse reports, all of which were made prior to the publication of the correspondence by Mr. Clay in 1826. Besides Marshall, Madison, Pickering, and Clay, the validity of the claims has been recognized by Clinton, Edward Livingston, Everett, Webster, Cushing, Choate, Sumner, and many other of the most distinguished statesmen known to American history, and while opponents have not been wanting, among the most eminent of whom were Forsyth, Calhoun, Polk, Pierce, Silas Wright, and Benton, still the vast weight of authority in the political division of the Government has been strenuous in favor of the contention made here by the claimants.

The judiciary has seldom occasion to deal with the abstract right of the citizen against his Government; for in a case raising such a question the individual is without remedy other than that granted him by the legislature. The question of right, therefore, is usually passed upon by the political branch of the Government, leaving to the courts the power only to construe the amount and nature of the remedy given. Still judicial authority is not wanting in support of the position that by the agreement with France the United States became liable over to their individual citizens. Lord Truro laid down in the House of Lords as admitted law—

That if the subject of a country is spoliated by a foreign Government he is entitled to redress through the means of his own Government. But if from weakness, timidity, or any other cause on the part of his own Government no redress is obtained from the foreign one, then he has a claim against his own country. (*De Bode v. The Queen*, 3 Clarke's House of Lords, 464.)

The same position is sustained by that eminent writer upon the public law, Vattel, who held that while the sovereign may dispose of either the person or the property of a subject by treaty with a foreign power, still, "as it is for the public advantage that he thus disposes of them, the state is bound to indemnify the citizens who are sufferers by the transaction." (Book 4, ch. 2.)

Napoleon, from his retirement in St. Helena, testified that by the suppression of the second article of the treaty of 1800 the privileges which France had possessed by the treaty of 1778 were ended, and the "just claims which America might have made for injuries done in time of peace" were annulled, adding that this was exactly what he had proposed to himself in fixing these two points "as equi-ponderating each other." (Gourgaud, *Memoirs*, vol. 2, p. 129.)

Finally, Senator Livingston, familiar with the whole subject as a contemporary, in his report upon it to the Senate, said:

The committee think it sufficiently shown that the claim for indemnities was surrendered as an equivalent for the discharge of the United States from its heavy national obligations, and for the damages that were due for their preceding non-performance of them. If so, can there be a doubt, independent of the constitutional provision, that the sufferers are entitled to indemnity? Under that provision is not this right converted into one that we are under the most solemn obligations to satisfy? To lessen the public expenditure is a great legislative duty; to lessen it at the expense of justice, public faith, and constitutional right would be a crime. Conceiving that all these require that relief should be granted to the petitioners, they beg leave to bring in a bill for that purpose.

The word "national" has been largely used in argument in allusion to the different kinds of claims at different periods brought into the discussion, and is a convenient word if clearly understood in the connection in which it is used. All claims are "national" in the sense of the *jus gentium*, for no nation deals as to questions of tort with an

alien individual; the rights of that individual are against his Government, and not until that Government has undertaken to urge his claim—not until that Government has approved it as at least *prima facie* valid—does it become a matter of international contention; then, by adoption, it is the claim of the nation, and as such only is it regarded by the other country. The name of the individual claimant may be used as a convenient designation of the particular discussion, but as between the nations it is never his individual claim, but the claim of his Government founded upon injury to its citizen. Nations negotiate and settle with nations; individuals have relations only with their own Governments. Other claims, sometimes the subject of argument, rest upon injury to the state as a whole; of these an apt illustration is found in the so-called "indirect" claims against Great Britain, disposed of in the arbitration of 1872, and in the claims advanced by France for injury caused by non-compliance with the treaties of 1778.

Thus, while all claims urged by one nation upon another are, technically speaking, "national," it is convenient to use colloquially the words "national" and "individual" as distinguishing claims founded upon injury to the whole people from those founded upon injury to particular citizens. Using the words in this sense, it appears that in the negotiations prior to the treaty of 1800, and in effect in the instrument itself, national claims were advanced by France against individual claims advanced by the United States. France urged that she had been wronged as a nation; we urged that our citizens' rights had been invaded. If "national" claims had been used against "national" claims, and the one class had been set off against the other in the compromise, of course the agreement would have been final in every way, as the surrender and the consideration therefor would have been national, and no rights between the individual and his own Government could have complicated the situation. But in the negotiation of 1800 we used "individual" claims against "national" claims, and the set-off was of French national claims against American individual claims. That any Government has the right to do this, as it has the right to refuse war in protection of a wronged citizen, or to take other action, which, at the expense of the individual, is most beneficial to the whole people, is too clear for discussion. Nevertheless, the citizen whose property is thus sacrificed for the safety and welfare of his country has his claim against that country; he has a right to compensation, which exists even if no remedy in the courts or elsewhere

be given him. A right often exists where there is no remedy, and a most frequent illustration of this is found in the relation of the subject to his sovereign, the citizen to his Government.

It seems to us that this "bargain" (again using Madison's word), by which the present peace and quiet of the United States, as well as their future prosperity and greatness were largely secured, and which was brought about by the sacrifice of the interests of individual citizens, falls within the intent and meaning of the Constitution, which prohibits the taking of private property for public use without just compensation. We do not say that for all purposes these claims were "property" in the ordinarily accepted and in the legal sense of the word; but they were rights which had value, a value inchoate, to be sure, and entirely dependent upon adoption and enforcement by the Government; but an actual money value capable of ascertainment the moment the Government had adopted them and promised to enforce them, as it did in August, 1793, and constantly thereafter. That the use to which the claims were put was a public use can not admit of a doubt, for it solved the problem of strained relations with France and forever put out of existence the treaties of 1778, which formed an insuperable obstacle to our advance in paths of peace to the achievement of commercial greatness.

The defendants urge further that the treaty of 1803 finally disposed of all pretensions of citizens of the United States in regard to these spoliations.

One of the principal objects of this treaty is found in the instructions to Mr. Livingston, our minister, wherein the Secretary of State directed his particular attention to claims embraced in the fourth article of the treaty of 1800, describing them as arising from: "(1) Cases of capture wherein no judicial proceedings have been had; (2) cases carried before French tribunals, and not definitively decided on the 30th September, 1800; (3) captures made subsequent to that date." (Madison to Livingston, Sept. 28, 1801, Doc. 102, p. 701.)

Accordingly Mr. Livingston in January following complained to the French Government of infractions of the existing treaty (of 1800) in relation to "vessels taken after its signature," "vessels previously taken where no judicial proceedings had been had," "vessels on which no definitive sentence had been given before that day," or which were removable to the council of prizes; these are fourth-article claims embraced in the *modus vivendi* therein provided. Claims for vessels

which were to have been restored are clearly not claims which had matured prior to September 30, 1800, when the treaty was signed. (*Ibid.* 704.)

In the next month (February 24, 1802) Mr. Livingston speaks of the differences as "debts," about which he must transmit to his Government a statement of the measures about to be adopted by France, "with a view either to afford it the satisfaction that it will always feel in contributing to the interests of France . . . or of putting a stop to credits that must be ruinous to its citizens already suffering under heavy losses sustained by the detention of a considerable capital in the hands of the French Government." (*Ibid.* 708.) It is thus apparent that these claims, in the view of the negotiator, rested substantially on contract, and it is further apparent from the text of the note that these contracts were for supplies to the French fleets and armies.

This is the first subject of negotiation; the second is as to the council of prizes, about which there were "daily complaints of their entire disregard of the treaty," so much so that when a vessel was ordered restored it was sent back in a damaged state and charged with cost of "detention, storage, etc." Fourth-article claims these, as we have already seen.

Livingston later (April 17, 1802), in discussing the fifth and second articles of the treaty of 1800, says:

The fifth article expressly stipulates that all debts due by either Government to the individuals of the other shall be paid, but as this would also have included the indemnities for captures and condemnations previously made, and it was the intention of the contracting parties, by the second article, to preclude this payment as depending on a future negotiation, it was necessary to except from this promise of payment all that made the subject of the second article. . . . On its [the second article] being erased, the fifth article stands alone as a promise to pay, with the single exception of indemnities for captures and condemnations. (*Ibid.* 717.)

And he adds that so far as relates to indemnities for captures and condemnations which had been made previous to the signature of the treaty his demands could not be supported.

It seems hardly necessary to quote further from the correspondence, which shows that Mr. Livingston not only never had in mind, but

expressly excluded, second-article claims, directing his attention first to debts, "confirmed by treaty," as he says (*ibid.* 729), and second, to vessels seized during or after the negotiation of the treaty of 1800; that is, claims "confirmed," to use his word, by that treaty's fourth and fifth articles.

The distinction between different classes of claims then existing between the United States and France must be clearly marked out before the treaty of 1803 can be properly understood. The second article of the treaty of 1800 covered claims for illegal seizures and condemnations which were tied to the treaties of 1778. But all the illegal captures were not covered by that second article, for the fourth article treated of others; that is, of "property captured, and not yet definitively condemned, or which may be captured before the exchange of ratifications;" and this property, it was agreed, should be restored. That is, while the negotiations of the Ellsworth mission were proceeding the French decrees remained in force and spoliations had not stopped; the cases of some seized American vessels were then pending before the French tribunals, and these were the ones to be restored if not "definitively condemned" by the time the treaty became a law; others might be seized pending the discussion and before exchange of ratifications; in fact such seizures were made, and these also were to be restored.

Additional proof that this fourth article was in effect a mere *modus vivendi* is found in its concluding paragraph, which provides that it shall take effect from the date of signature, not from the exchange of ratifications, and that if any property should be condemned—that is condemned in the future—before knowledge of the stipulation "shall be obtained, the property shall without delay be restored or paid for." Now, the property covered by this article, to wit, that then before the tribunals or which might thereafter come before the tribunals before the new treaty took effect, never was restored or paid for, although spoliations continued for some time.

It is important here to note the distinction between the position as against the French Government of cases pending during the negotiation or which might thereafter arise and that of cases now before this court wherein the condemnation had occurred before. This claim and those like it were "claims to indemnity" merely; the property had disappeared and could not be restored, the French tribunals had definitively acted, and payment for it would be made only upon admission

by the United States of the continuing force of the ancient treaties; while, as to then pending cases the property could be restored, or in case of mistaken sale its value could be easily and immediately ascertained, and the fourth article absolutely promised restoration or payment.

The agreement of 1803 is contained in three instruments forming the contract by which we acquired Louisiana; these treaties give no rights to these claimants, as is popularly supposed; on the contrary, it is contended by the Government that any rights which ever existed were destroyed by them. The third treaty, providing for the payment of "sums due by France to the citizens of the United States," is the only one bearing upon these cases.

Article 1 provides that these "sums," called "debts," contracted before September 30, 1800 (the date of the prior treaty), shall be paid, with interest.

Article 2 describes the debts as those set forth in an annexed conjectural note, which is a list of claims allowed by the French accounting officers for such articles as rice, flour, salt beef, cloth, leather, cotton and indigo, wines and spirits; while article 6 limits the preceding articles to debts still due American citizens yet creditors of France "for supplies, for embargoes, and prizes made at sea in which the appeal has been properly lodged within the time mentioned in the convention" of 1800. But there is no such time mentioned in that convention, nor is there a word in it looking to any appeal whatever from decisions of inferior tribunals; the only provision about prizes in that treaty is that contained in its fourth article, directing that in the future they be restored.

Proceeding now to article 5 of this somewhat mysterious instrument of 1803, we find another limitation upon the preceding articles, to wit, that they shall cover only captures wherein the council of prizes has ordered restitution if the claim was valid against France, and then only in case of "insufficiency of the captors," *i. e.*, that the privateer's bond was not good. Further, it shall apply to debts mentioned in the fifth article of the treaty of 1800, that is, "debts" (not claims for damage by tort) due by one nation to citizens, of the other, and this fifth article of 1800 expressly bars claims for captures or confiscations, while the fifth article of 1803 expressly does not comprehend "prizes whose condemnation has been or shall be confirmed." Therefore, by this series of limitations, the scope of the treaty of 1803 is

confined on its face, and so far as the cases at bar are interested in it, to captures, of which the council of prizes shall have ordered restitution," provided the claim was a valid one and the captor insufficient. Really, there does not seem very much left of it, so far as "embargoes and prizes made at sea" (Art. 4) are concerned.

The significant fact is stated to us by counsel in this connection that there were presented to the commission formed under the treaty of 1831, which we shall soon have occasion to examine, claims for two vessels, the *Caroline* and the *Orlando*, which were rejected upon the express ground that the captures were made prior to September 30, 1800. Further, the report of the board under the treaty of 1803 shows that only eight captures at sea were allowed, a ridiculously small number if the class of claims now at bar were within the jurisdiction of that tribunal.

That the settlement and payment of "debts," not of claims for tort, was the primary object of the treaty of 1803 is explained in its preamble and is apparent from its text, while the treaty of 1800 dealt with torts and indemnities for wrongs committed upon our commerce. The claim for debts was not sacrificed by the treaty of 1800, but kept alive by the fifth article, which, in further proof of the abandonment of claims for tort, explicitly excepted from the benefits of its provisions all "indemnities claimed on account of captures and confiscations." But these "debts contracted by one of the two nations with individuals of the other" were not paid as the treaty of 1800 promised, nor, as Mr. Livingston said to the French Government in 1802, was there the most "distant hope of their payment." (Doc. 102, p. 714.)

The association of the second and fifth articles of the treaty of 1800 in the preamble of the treaty of 1803 has been deemed significant as showing an intention to revive and settle the second-article claims now commonly known as "spoliation" claims, whereas the allusion was intended to reaffirm the exclusion of these claims already made by the second article; for the fifth article (1800) includes "debts" which are to be settled and expressly excludes "indemnities"; that is, excludes the subject-matter of the second article, which was not to be settled; so that France, being desirous in 1803, as the preamble says, "in compliance with the second and fifth articles of the convention of 1800 to secure the payment of the sums due by France to the citizens of the United States," covenanted to pay "debts," not indemnity for torts other than those specified, and which had been turned into debts by

the fourth article of the treaty of 1800. To put it in another form: as the original second article had ceased to exist, and was replaced by a provision that the treaty should last eight years, of course a reference to this new second article in the treaty of 1803 would have been absurd; so we must conclude that the negotiators referred to the original second article, the article which had been expunged by agreement. That article, so far as claims of citizens were concerned, referred to torts and nothing else; the fifth article referred to "debts," and provided that payment should be made therefor; and then went on to make an express exclusion from its benefits of claims for captures and confiscations, that is, claims arising from torts which were covered by the second article as it then stood. What more natural, then, that, in rehearsing the objects of the treaty of 1803, the two articles should be brought together in the preamble, the fifth article as embracing the debts due and the second article as covering the express exception made in the fifth article, which "includes debts contracted," and excludes "indemnities claimed on account of captures and confiscations"? The language of the preamble is, therefore, in compliance with the second as well as with the fifth article of the treaty of 1800.

We are of opinion that the treaty of 1803 had no reference to the claims embraced in the second article of the treaty of 1800.

Turning to the particular case now on trial we consider it with the principle admitted that the claims popularly known as "French spoliation claims" were, as a class, and if embraced in the description of the second article of the treaty of 1800, valid claims against France, which were surrendered by our Government for the valuable consideration found in a release from the obligations of the treaties of 1778, and that, by this action, the Government of the United States assumed the liabilities of France in regard to them, and is in duty bound to recompense the individuals who suffered loss by the illegal captures and condemnations.

The findings show that the schooner *Sally*, owned by Americans, commanded by an American, and laden with an American cargo, while on a commercial voyage from Massachusetts to Spain, was, on the 5th day of June, 1797, seized by the French privateer *Intrépide*, taken to the port of Nantes, there condemned by a French tribunal, and "confiscated" for the benefit of the privateer. It was not alleged that she had violated the law of nations, either by attempting a blockade or by carrying contraband, or in any other manner, but that she had violated

a local French municipal regulation "concerning the navigation of neutrals." It appears upon the face of the decree that the Government of France, through laws passed by its own legislature, valid within its territorial jurisdiction and upon its own ships, but not elsewhere, attempted to regulate the conduct of neutral merchantmen upon the high seas, where they were subject only to the laws of their own country and that law of abstract right and justice which by mutual consent has become crystallized into the law of nations.

To learn wherein the schooner violated the French decree we must turn to the findings, which rehearse the judgment of the tribunal, as follows:

"That while the master may be correct in the sum total of his clearance papers he is flagrantly at fault as to his crew-list," and "considering that the obligation common to the French nation and to the United States, and which constitutes the safety of their respective navigation, is defined by the treaty of February 6, 1778, which decides, articles 25 and 27, that every captain who receives a passport must be provided with a list, signed and attested by witnesses, containing the names and surnames and place of birth and residence of the persons composing the crew of his ship and of all persons embarking upon her, which he will not receive without the knowledge and permission of the naval officers. Considering that the memorandum or crew-list fulfills none of these formalities, inasmuch as it is unsigned, that the places of birth and residence of the men composing the crew are not declared, and the permission of the naval officer is not given; considering that article 6 of section 7 of the marine regulations of 1781 declares to be lawful prize the cargoes of confiscated ships," and "considering finally that article 4 of the decree of the Executive Directory of the 12th Ventose, year five, is clear and precise, and that it declares to be a good and lawful prize every American ship which shall not have a crew-list in due form such as is described by the model annexed to the treaty of February 6, 1778," therefore, the court, in conformity with these laws, and especially with article 4 of the said decree, declared valid the capture of the *Sally* and her cargo, and declared the captain to belong to the "enemies of the Republic" because he did not have a crew-list in conformity with the French decree.

The vessel and cargo were confiscated because the crew-list, the "*rôle d'équipage*," was not in form, although there is not a word or sentence, as the French afterwards admitted (Doc. 102, p. 637), in the

treaties of 1778 requiring any such document. The French decree required it, but we can not admit that the government of a foreign country may stretch its arm over the ocean, and, seizing an American vessel, direct it as to the papers it shall carry, under penalty of confiscation. There is no allegation in the proceeding that the *Sally* did not have all the papers, other than this crew-list, required by the treaty of 1778 and the laws of the United States. In fact, the court itself admits this in saying that the captain is correct "in the sum total of his clearance papers, . . . but flagrantly in fault as to his crew-list." How flagrantly at fault? He had complied with the laws of his country, he had not violated a provision of the treaties of 1778, and it is not hinted that he infringed the law of nations or intended to do so.

The confiscation rests upon the decree of March 2, 1797, authorizing the seizure and condemnation of every American vessel not having on board "a *rôle d'équipage*, in proper form, such as is prescribed by the model annexed to the treaty of the 6th of February, 1778." A "*rôle d'équipage*" is for all practical purposes a "crew-list," although technically, under French regulations, it contains the names of all on board, including the passengers. Still "crew-list" is a sufficient translation for the purposes of this case.

The treaty of 1778 required vessels of each party to be furnished with a passport and a certificate as to her cargo and destination, but no mention whatever is made of a crew-list. Seizures on account of the lack of this instrument were, however, made even before the decree of March, 1797, and our consul-general, in calling attention to this fact, said to the minister of foreign affairs (Feb. 23, 1797, *ibid.* 155):

By no regulations of the United States are our ships subjected to this formality; and not one of our vessels has (*rôle d'équipage*) a crew-list thus countersigned. Moreover, in the different treaties and conventions that connect France with America there is not found a single article sufficient to justify the doctrine set forth by the privateer. . . . I consider it unnecessary for me to communicate on this subject the right and supreme law of nations, being persuaded that you will think with me that every free and independent nation should possess the exclusive right to establish regulations for the management of their own navigation; and that no nation possesses the right to subject the citizens of another power to formalities to be observed in a foreign country not exacted by the laws of said country or by those to which said citizens

belong. . . . The principle which the captain [of the privateer] desires to see established would lead to the condemnation of all the ships belonging to my nation actually found in the different ports of France, under the faith of treaties, and to authorize the cruisers of the Republic to capture all our merchantmen.

Mr. Pinckney afterwards (May 15, 1797, *ibid.* 171) writes:

Our papers are, as they ought to be, according to the maritime laws of our country.

And again (June 28, 1797, *ibid.* 176):

Mr. Adet [the French minister] arrived at Havre in an American ship without a *rôle d'équipage*. The *Courier Maritime du Havre* . . . infers that Mr. Adet must have been convinced, with all other publicists, that a *rôle d'équipage* was not necessary, and that all that was requisite was a passport conformable to the model annexed to the treaty of 1778.

Mr. Pickering, then Secretary of State, wrote the next year (Dec. 13, 1798, *ibid.* 429):

There is no shadow of foundation for the claims set up by the French Government of the necessity of our vessels being provided with a *rôle d'équipage*.

In default of express treaty provision no Government can prescribe to our merchantmen navigating the high seas the detailed form, and number of the papers they are to carry, nor seize or confiscate those merchantmen for non-compliance with that nation's municipal statutes. The seizure of this vessel, and of others under like conditions, was clearly illegal and unjustifiable.

The defendants say, further, the condemnation can not be illegal because made by a prize court having jurisdiction, and the decisions of such courts are final and binding. This proposition is of course admitted so far as the *res* is concerned; the decision of the court, as to that, is undoubtedly final, and vests good title in the purchaser at the sale; not so as to the diplomatic claim, for that claim has its very foundation in the judicial decision, and its validity depends upon the justice of the court's proceedings and conclusion. It is an elementary doctrine of diplomacy that the citizen must exhaust his remedy in the

local courts before he can fall back upon his Government for diplomatic redress; he must then present such a case as will authorize that Government to urge that there has been a failure of justice. The diplomatic claim, therefore, is based not more upon the original wrong upon which the court decided than upon the action and conclusion of the court itself, and, diplomatically speaking, there is no claim until the courts have decided. That decision, then, is not only not final, but, on the contrary, is the beginning, the very corner-stone, of the international controversy. This leads us naturally to another point made by the defense in that the claimant did not "exhaust his remedy," because he did not prosecute an appeal. We of course admit that usually there is no foundation for diplomatic action until a case cognizable by the local courts is prosecuted to that of last resort; but this doctrine involves the admission that there are courts freely open to the claimant, and that he is unhampered in the protection of his rights therein, including his right of appeal. It is within the knowledge of every casual reader of the history of the time that no such condition of affairs in fact then existed.

The very valuable report of Mr. Broadhead shows (pp. 6 and 7) that prior to March 27, 1800, there was practically no appeal in these cases except to the department of the Loire-Inférieure; in the then existing state of bad feeling and modified hostilities, and under the surrounding circumstances, this was to the captains of the seized vessels, in most if not in all cases, a physical impossibility. Nor prior to the agreement of 1800 was there any practical reason for appealing to a court when the result, as our seamen believed, whether rightly or not, but still honestly, was a foregone conclusion, and while negotiations were progressing for a settlement; nor is there anything in these negotiations showing that a technical exhaustion of legal remedy would be required. We are of opinion that the claimant was not, under these purely exceptional circumstances, obliged to prosecute his case through the highest court, even if he could have done so, which we doubt.

This court is forbidden by the act conferring jurisdiction not only to examine claims embraced in the treaty of 1803, which we have considered, but also those allowed and paid in whole or in part under the treaty of 1819 with Spain and those allowed in whole or in part under the treaty of 1831 with France.

The reference heretofore made in this opinion to the Spanish treaty

is sufficient to show its inapplicability to vessels seized on the high seas by a French privateer, taken to a French port and there illegally condemned and confiscated; so that treaty may be thrown out of the consideration of this case.

The treaty of 1831 is a claims treaty, by which the French Government, "in order to liberate itself completely from all the reclamations preferred against it by citizens of the United States for unlawful seizures, captures, sequestrations, confiscations, or destructions of their vessels, cargoes, or other property," agreed to pay 25,000,000 francs to the United States, for distribution (Art. 1), while the United States on their part agreed to pay to France for claims, described in language somewhat similar, the sum of 1,500,000 francs (Art. 3). As to other claims each country opened its courts to the citizens of the other, and finally France abandoned its demands under the eighth article of the Louisiana treaty in return for a reduction of duties upon French wines.

The wording of this treaty is broad enough at first glance to sustain the defendants' contention that these claims are included in it; but treaties and statutes, like every other document, must be read in the light of the facts as they existed at the time. A treaty now made with Great Britain providing a settlement of "all claims" could not be held to reopen the proceedings of the Geneva arbitration and to authorize payment of claims there dismissed, for the award was final, both as to what was allowed and as to what was refused. Nor could a similar general convention with France permit an opening of the proceedings of the Franco-American Commission with possible payment of claims there refused and declared forever barred.

Such treaties look not to dead issues, but to living pending claims, forming at the time a subject of contention between the Governments, and not to those universally regarded as finally settled. Claims of the class of the one at bar had been disposed of in 1801, when the President and Senate concurred in Napoleon's stipulation as to the second article, and since that time, although they had been constantly pressed upon the United States as an obligation of that Government to its citizens, they nowhere appear as a subject of discussion between the nations. France, by the treaty of 1831, desired to liberate itself from claims "preferred against it," by citizens of the United States, but these spoliation claims were not then being preferred against it; on the contrary, since 1801 the claimants had turned their attention ex-

clusively to the United States, recognizing the force and effect of what was called the "retrenchment of the second article." The French Government clearly understood this treaty of 1831 as excluding all American claims of every description originating prior to the treaties of 1803. (Ex. Doc. 147, 22d Cong., 2d sess., p. 165.)

Our commissioners who distributed the fund also so understood it, and required every claimant to show that his "claim remained unimpaired and in full force against France" in 1831. (House Ex. Doc. 117, 24th Cong., 1st sess., p. 4.) But these spoliation claims had not only been impaired but destroyed as a French obligation by the treaty of 1800; many cases of captures made prior to September 30, 1800, were presented to the board and rejected. (Sumner's Report, p. 35.)

A broad distinction is made in the remedial statute (January 20, 1885) between the claims described in these different treaties of 1803, 1819, and 1831. As to the treaty of 1803 the act does not extend to claims "embraced" in its provisions; as to the treaty of 1819 the act does not extend to claims "allowed and paid in whole or in part" under its provisions; as to the treaty of 1831 the act does not extend to claims "allowed in whole or in part" under its provisions. It is not contended that this claim was "allowed in whole or in part" under the provisions of the treaty of 1831.

We have not considered the point that the treaties of 1778 were abrogated by the act of Congress passed in 1798. That question, which the ablest minds of the period were unable to solve, and which proved an ever present and enduring obstacle to all negotiation until forcibly removed by Napoleon, with our concurrence, we fortunately are not forced to deal with. The rights of this claimant rest upon no convention, but are founded upon international law. Treaty or no treaty, a foreign nation can not be permitted to confiscate an American merchantman engaged in legitimate commerce upon the high seas because his crew-list does not fulfill the requirements of that nation's local ordinances. That the act of Congress was binding within the jurisdiction of the United States and was necessarily to be so regarded by our courts does not now admit of question. The treaties were, however, not only part of the supreme law of the land wherein they were replaced, within the jurisdiction of the Constitution, by a later supreme law, to wit, a statute; but they were also, as between the two Republics, contracts, which one of the parties attempted to annul. Treaties containing no clause fixing their duration are, under certain

circumstances, voidable at the option of one party. Whether there existed in 1798 such circumstances as authorized and made valid an abrogation of the treaties of 1778 by the United States was the very question left unsettled by the treaty of 1800, the one question upon which by no possibility apparently could the parties agree.

For the same reason we find it unnecessary to examine how far the French violated the agreement by their treaty of 1786 with Great Britain (15 Martens, *Recueil de Traités*, 2 ed., vol. 4, p. 155), or the effect, by way of abrogation of these agreements, of the Jay treaty, or the change in the form of government in France.

Some argument has been made as to the ownership of this claim, based upon the provision of the statute that the court shall determine "the present ownership, and if by assignee, the date of the assignment, with the consideration paid therefor." (§ 3.) Whatever may have been the intention of Congress in inserting this provision, its terms are perfectly clear; the findings of fact show in this case that the claimant is the administrator with the will annexed of the owner of the *Sally*, and show all other facts necessary to a decision upon the subject, except as to one of the defendants' points; as to this we can not agree that Congress intended this court to perform what is in effect a physical impossibility and to throw upon us the task of probate courts in the investigation of the rights of thousands of descendants and devisees of the original claimants, who are now scattered, in all human probability, to the four quarters of the globe. To ask this court to go back to the year 1800 and follow from that time down the succession of every then existing claimant is to ask us to do that which under our jurisdiction and powers would be an impossibility. A much more reasonable interpretation of the act appears upon its face, and applying that interpretation to this case we have found that the claimant, as administrator of the owner of the schooner *Sally*, is the owner of the claim. We consider it no part of our duty under the statute to place ourselves in the position of a court of probate and report to Congress the manner in which any ultimate recovery should under the laws of the thirty-eight States and eight Territories of this Union be distributed among the numerous next of kin or devisees of the original claimants and their descendants. The administrators are officers of those probate courts, subject to their jurisdiction and control, and presumably have filed adequate bonds for the honest and proper performance of the trust reposed in them.

Congress asks us for two facts: First, the present ownership. The owner, both in law and equity, the Supreme Court has said, is the administrator (*Villelonga's Case*, 23 Wall. 35), and that suffices for this particular case. Secondly, Congress asks, where there has been an assignment, not only the name of the present owner, but the date of the assignment and the consideration paid therefor. Of course these facts will be reported when such a case is presented.

So we reach the end of this opinion as unlike the usual judicial expression in its form and supporting authorities as are the cases before us unlike those ordinarily submitted to a tribunal of the law. We are, however, for the moment invested with some of the powers and jurisdiction belonging to the political branch of the Government, and upon us is imposed an examination not usually or naturally committed to a judicial body. We have been required not to investigate legal rights, based upon the doctrines and principles of the common law, but to inquire into and to report upon the ethical rights of a citizen against his Government; rights which are never enforceable except by the consent of the sovereign—in this country the legislature—as whose substitute we act to the limited extent prescribed and marked out by the remedial statute.

The result which we have reached is supported by resolutions passed in each of the thirteen original States, by twenty-four reports made to the Senate by its committees, by over twenty similar reports made to the House of Representatives, by the fact that while three adverse reports have been made, one to the Senate and two to the House, no adverse report has been made in either body since the publication of the correspondence in 1826, and by the further facts that the Senate has passed eight bills in favor of these claimants, and the House has passed three of these, of which one is the present law, the other two having been vetoed, one by President Polk, substantially upon grounds not at this time important, the other by President Pierce for reasons which we have considered very fully in this opinion, and with which, after the most careful and painstaking consideration, we can not agree.

The arguments of counsel for claimants, marked as they were by ability, industry, and a frank desire for a just ascertainment of the rights involved, have been of great assistance to us; while the learned assistant attorney for the United States has presented the defense with a zeal and force of argument which we do not find in the history of the long discussions it has heretofore received.

The chief justice and all the judges concur in this opinion, and we shall, in accordance with the statute, report to Congress the conclusions of fact and law in this claim, together with a copy of this opinion, which contains (using the words of the statute) the conclusions which, in our judgment, "affect the liability of the United States therefor."

THOMAS CUSHING, ADMINISTRATOR, v. THE UNITED STATES¹

[French Spoliations No. 132. Decided December 6, 1886]

On the Defendants' Motion

- The general question of the liability of the United States for claims released to France by the treaty of 1800 is decided in the case of *Gray* (21 C. Cls. 340). Subsequently during the term, the law officers of the government move for a rehearing. All of the questions involved are re-argued and reconsidered.
- I. The French Spoliation Cases can not be maintained as subjects of legal right founded on municipal law; but Congress with full knowledge of the law and the facts, directed that they be investigated and determined under a different and broader rule, viz., "*According to the rules of law, municipal and international, and the treaties of the United States applicable to the same,*" Act of January 20, 1885. (23 Stat. L. 283).
- II. The question, what are "*valid claims to indemnity upon the French Government,*" is international and not within the scope of ordinary judicial inquiry, and is to be measured by rules which relate to the rights and obligations of nations.
- III. The purpose of the French Spoliation Act of 1885 is that the judicial shall assist the political branch of the Government in determining certain rights not enforceable in courts, but which are nevertheless obligatory under international law and the Constitution.
- IV. The court now adheres to its former conclusions (1) that the French depredations upon American commerce were illegal; (2) that the United States by the treaty of 1800 set off these claims against others maintained by France, and released them for a valuable consideration beneficial to this nation; (3) that an appeal from a prize court is not an indispensable prerequisite to diplomatic interference and amid the circumstances is no defense in this case.
- V. It is the purpose of the Spoliation Act that the court shall determine whether each claim brought before it is valid as against France, and whether the United States became liable over to the individual.
- VI. Neither original of the treaty of 1800 with France can be found; but the published copies differ only in the caption, which is not a part of a treaty, and is usually the work of an editor.

¹Court of Claims Reports, vol. 22, page 1.

- VII. The treaty was not a treaty of peace, nor did it conclude or recognize a state of war or a condition of hostilities. The decision in *Bas v. Tingy* (4 Dallas, 37), and the statutes to which the decision refers, examined and explained.
- VIII. The treaty is not an adjudication of these claims adverse to this Government. Its own terms negative that assumption; so do the negotiations which led to it, and so does the act of 1885.
- IX. The reprisals of this country upon France were most limited in their nature; were allowed by the natural laws of self-defense, and defined and regulated by acts of Congress which were defensive in character, allowing French merchantmen to pursue their voyages unmolested and to refit and provision in our ports.
- X. The seizure of an American merchantman can not be justified by the fact of her having been armed for defensive purposes. During the last century substantially all vessels were armed against pirates.
- XI. Condemnations of prize courts are final in actions between individuals, and as to the vessels condemned, giving purchasers a good title as against all the world, but do not bind foreign nations nor bar claims valid by international law.
- XII. The rights of prize courts are the rights of the capturing states. Their decrees do not relieve the state from responsibility nor preclude other powers from seeking redress or investigating the captures *de novo*.
- XIII. The absence of a ship's papers may be punishable within local jurisdiction as a police measure, but never by absolute confiscation, if it be shown that the vessel was innocently pursuing a legitimate voyage.

The Reporters' statement of the case:

The cases now argued and submitted are the same as those determined at the last term (21 C. Cls. 340, 430), the present motion being merely a means for reviewing and resubmitting the legal questions previously considered. The cases were reported to Congress on the same day that this motion was decided. The findings in those cases are given below.

The Schooner Industry

- No. 132. Thomas Cushing, administrator of Marston Watson.
- No. 258. Charles F. Adams, administrator of Peter C. Brooks.
- No. 258. William Sohler, administrator of Nath. Fellowes.
- No. 1918. H. W. Blagge and Susan B. Samuels, administrators of Crowell Hatch.

FINDINGS OF FACT

These cases having been tried together before the Court of Claims, William E. Earle, Esq., appearing for Thomas Cushing and Charles F. Adams, Edward Lander, Esq., for William Sohier, and George S. Boutwell, Esq., for Blagge and Samuels, claimants; and Benjamin Wilson, Esq., assistant attorney in the Department of Justice, with Robert A. Howard, Assistant Attorney-General, for the defendants, the court, upon the evidence, finds the facts to be as follows:

I. The schooner *Industry*, a duly registered vessel of the United States, of which Benjamin Hawkes was master, sailed on a commercial voyage from the port of Boston, Mass., June 1, 1798, bound for Surinam with a cargo of merchandise, both owned by Marston Watson, a citizen of the United States residing in said Boston, now deceased; said vessel was lawfully pursuing her voyage when she was seized and captured on the high seas by the French privateer *Victoire*, Captain Bandry, on the 26th of July, 1798, and was taken into the French port of Cayenne, and there libeled, condemned, and sold as a prize.

II. The sole ground of condemnation was that the *rôle d'équipage* which she had on board was "signed only by one notary public, without the confirmation of witnesses," and that there was written on the back of said *rôle* an unsigned certificate that a *rôle d'équipage* was unnecessary.

III. The value at the time of said seizure was as follows:

Vessel	\$1,500
Freight	2,500
Cargo of merchandise.....	10,555
Cost of insurance.....	4,000
Total value	\$18,555

IV. Said Watson had insurance thereon to the amount of \$12,000, which the claimant, Cushing, his duly appointed administrator, admits was paid to said Watson, or that he is chargeable with the receipt thereof. Crowell Hatch, William Smith, David Greene, Benjamin Bussey, and Nathaniel Fellowes, all citizens of the United States, were among the insurers, each for \$1,000, through Peter C. Brooks, also a citizen of the United States, an insurance broker, which said sums were paid to said Marston Watson on or before February 20, 1799, as for a total loss of said schooner with the cargo.

V. Henry W. Blagge and Susan B. Samuels are the duly appointed administrators of said Crowell Hatch, deceased, and William Sohier is the duly appointed administrator of said Nathaniel Fellowes, deceased, and in their said representative capacity they are the present owners of the claims of their respective intestates above set out.

VI. Said Smith, on the 15th of December, 1801, in consideration of \$4,000 and the assumption by said Brooks of all the disadvantages of the said Smith as an underwriter in the office of the said Brooks and said Greene, on the 23d of December, 1801, in consideration of \$6,000, and the assumption of the disadvantages of said Greene as an underwriter in the office of said Brooks and said Bussey, on the 15th of February, 1805, in consideration of \$10,000 and the assumption by said Brooks of the disadvantages of the said Bussey as an underwriter in the office of the said Brooks, assigned to said Brooks all their respective underwriting accounts in his said office; and said Charles F. Adams, administrator aforesaid in said representative capacity, is the present owner of said claims so assigned.

VII. Said claims were not embraced in the convention between the United States and the Republic of France concluded on the 30th of April, 1803. It was not a claim growing out of the acts of France, allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain, concluded on the 22d of February, 1819, and it was not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July, 1831.

CONCLUSIONS OF LAW

The court finds as conclusions of law that said seizure and condemnation were illegal, and the owners and insurers had valid claims therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800, and were entitled to the following sums:

Marston Watson, owner of the vessel and cargo.....	\$18,555
Less the amount of the insurance.....	12,000
Balance.....	<u>\$6,555</u>

William Smith, David Greene, and Benjamin Bussey, represented by Charles Francis Adams, administrator of Peter Chardon Brooks,

assignee, Crowell Hatch, and Nathaniel Fellowes, each \$1,000, the amount of insurance paid by them respectively.

That said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States.

The conclusions of law which, in our judgment, affect the liability of the United States therefor, are set forth in the opinions of this court, delivered May 17 and 24, and December 6, 1886.

The Schooner *Delight*

No. 505. George Holbrook, administrator of Edward Holbrook.

No. 249. Charles Francis Adams, administrator of Peter C. Brooks.

No. 249. Ebenezer Gay, executor of the last will and testament of Ebenezer Gay, who was assignee in bankruptcy of Thomas English.

No. 249. Charles T. Hunt, administrator of Joseph Russell, surviving partner of Jeffrey & Russell.

No. 249. Henry W. Blagge and Susan B. Samuels, administrator and administratrix of Crowell Hatch.

No. 252. Charles Francis Adams, administrator of Peter C. Brooks.

FINDINGS OF FACT

These cases, involving a claim under the act of January 20, 1885, were heard by the Court of Claims. The claimants were represented by William E. Earle, Esq., Messrs. Shellabarger & Wilson, and George S. Boutwell, Esq.; and the defendants by Benjamin Wilson, Esq., assistant attorney, with whom was the Assistant Attorney-General. After hearing the parties, their proofs, and arguments, the court from the evidence find the facts to be as follows:

I. That the schooner *Delight*, an American registered vessel of 78 and a fraction tons, owned by Asa Payson and Edward Holbrook, both of Boston, Mass., sailed upon a commercial voyage from Boston to St. Bartholomew's, June 22, 1799, laden with a cargo of bacon, soap, candles, butter, and similar goods.

II. That said vessel and cargo were owned by Payson & Holbrook,

with an adventure, belonging to Stephen Curtis, the captain, all of whom were citizens of the United States.

III. That on July 2, 1799, the owners obtained of Peter Chardon Brooks a policy of insurance on said schooner for \$1,500, and on said cargo for \$4,500, whereon the hereinafter named insurers underwrote as stated.

IV. That on June 21, 1799, Stephen Curtis obtained a policy of insurance of \$500 on his adventure, whereon Tuthill Hubbard underwrote \$500.

V. That the schooner *Delight* and her cargo was captured by the French privateer, *La Courageuse*, Captain Vendibourg, July 19, 1799, and condemned at Guadeloupe.

VI. That the sole grounds for the condemnation were that a part of the cargo was English merchandise, and that the *rôle d'équipage* was deficient.

VII. That the cargo contained nothing contraband of war, under the treaty of February 6, 1778, and nothing English.

VIII. That the cargo owned by Payson & Holbrook was worth \$5,959, and the insurance paid thereon being \$4,500, they lost on the cargo \$1,459; that the schooner was worth \$3,243, and the insurance paid thereon being \$1,500, the loss thereon was \$1,743; that the freight was reasonably worth \$2,500; that the insurance premium paid was \$600, making \$6,302.

IX. That the said underwriters named in Finding No. III paid the said several sums for which they underwrote, amounting to \$6,000, and Tuthill Hubbard also paid the amount for which he underwrote, as found in Finding No. IV, and thereupon the insured abandoned to the underwriters in writing to the extent of the insurance.

X. Crowell Hatch, Tuthill Hubbard, William Smith, Jeffrey & Russell, Benjamin Homer, Thomas English, David Greene, Daniel Denison Rogers, all citizens of the United States, were insurers for the following sums, to wit: Said Hatch, Hubbard, Smith, and Jeffrey & Russell, each in the sum of \$1,000, said Homer, English, Greene, and Rogers, each in the sum of \$500, through Peter Chardon Brooks, also a citizen of the United States and an insurance broker, which said sums were paid to the said Payson & Holbrook before January 25, 1800, as and for a total loss of said schooner and cargo.

XI. Tuthill Hubbard, a citizen of the United States, was an insurer in the sum of \$500, through Peter Chardon Brooks, a citizen of the

United States and an insurance broker, which said sum was paid to Stephen Curtis before January 25, 1800, as and for a total loss of his adventure on board of said schooner.

XII. Henry W. Blagge and Susan B. Samuels are the duly appointed administrators of Crowell Hatch, deceased, and Charles F. Hunt is the administrator, *cum testamento annexo*, of Joseph Russell, deceased, surviving partner of Jeffrey & Russell; and Ebenezer Gay is the executor of the last will and testament of Ebenezer Gay, assignee in bankruptcy of Thomas English, deceased; and in their representative capacities they are the present owners of the claims of their respective decedents herein set forth.

XIII. That said Smith, on the 16th of December, 1801, in consideration of \$4,000 and of the assumption of the liabilities of the said Smith as an underwriter in the office of Peter Chardon Brooks; and said Greene, on the 23d day of December, 1801, in consideration of \$6,000 and the assumption of the liabilities of the said Greene in the office of said Brooks as an underwriter; and said Rogers, on the 19th of October, 1804, in consideration of \$3,400 and the assumption of the liabilities of the said Rogers as an underwriter in the office of the said Brooks; and the said Homer, on the 23d of July, 1805, in consideration of \$5,000 and the assumption of the liabilities of the said Homer in the office of the said Brooks as an underwriter; and the said Hubbard, on the 4th of April, 1808, in consideration of \$60,000 and of the assumption of the liabilities of the said Hubbard in the office of the said Brooks as an underwriter, assigned to the said Brooks all their respective underwriting accounts in his said office.

XIV. That said claims were not embraced in the convention between the United States and the Republic of France, concluded on the 30th of April, 1803; that they were not claims growing out of the acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain, concluded on the 22d day of February, 1819; and they were not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July, 1831.

CONCLUSIONS OF LAW

The court finds as conclusions of law that said seizure and condemnation were illegal, and the owners and insurers had valid claims therefor upon the French Government prior to the ratification of the

convention between the United States and the French Republic, concluded the 30th day of September, 1800, and were entitled to the following sums to wit:

Payson & Holbrook, owners of vessel and cargo, after deducting insurance, \$6,302.

Benjamin Homer, Daniel Denison Rogers, and David Greene, represented by Charles Francis Adams, Jr., administrator of Peter Chardon Brooks, each \$500.

Crowell Hatch, represented by Henry W. Blagge and Susan B. Samuels, \$1,000.

Jeffrey & Russell, represented by Charles F. Hunt, \$1,000.

Thomas English, represented by Ebenezer Gay, \$500.

Tuthill Hubbard and William Smith, represented by Charles Francis Adams, Jr., administrator of Peter Chardon Brooks, \$1,000 each.

Tuthill Hubbard, in case No. 252, represented by Charles Francis Adams, Jr., administrator of Peter Chardon Brooks, \$500, the same being the amounts of insurance paid by them respectively.

That said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States.

The conclusions of law which in our judgment affect the liability of the United States therefor are set forth in the opinions of this court delivered May 17 and 24 and December 6, 1886.

The Schooner *Little Pegg*

No. 155. Francis King Carey, administrator of Samuel Hollingsworth.

FINDINGS OF FACT

This case was heard before the Court of Claims May, 1886.

The claimant was represented by William E. Earle, Esq., and John & David Stewart, Esqrs., and the defendants by Benjamin Wilson Esq., assistant attorney. After hearing the parties, their proofs and arguments, the court from the evidence finds the facts to be as follows:

I. In 1798, Thomas and Samuel Hollingsworth, of whom Samuel was the survivor, citizens of Baltimore and of the United States, were the owners of the schooner *Little Pegg*, a duly registered vessel of the United States.

II. In the same year said vessel sailed upon a lawful voyage from Baltimore, Md., to Kingston, Jamaica, under the command of William Auld, master, laden with a cargo of flour, crackers, peas, and shingles, all belonging to said owners. September 28, 1798, the vessel was captured by a French privateer, called *Le Macanda*, commanded by Lewis Duprat, and carried into Port au Paix. Said vessel and her cargo were subsequently condemned, to wit, October 3, 1799, as prize, at Cape François, by the French prize tribunal.

III. William Auld, the said master, was born in Scotland, but was naturalized as a citizen of the United States August 22, 1798, and had been a resident of Baltimore since January, 1795. The condemnation of the vessel and cargo was made on the ground that the master was a native of Scotland, with which country France was at war.

IV. At the time of the capture said vessel was worth \$2,000, the cargo \$2,760.50, and the freight \$1,200, making in all \$5,960.50. The claim has never been assigned. The claimant is the duly appointed administrator *de bonis non* of the estate of Samuel Hollingsworth, deceased, by the orphans' court of Baltimore.

V. This claim was not embraced in the convention between the United States and the Republic of France concluded on the 13th day of April, 1803; that it was not a claim growing out of the acts of France, allowed and paid, in whole or in part, under the provisions of the treaty between the United States and Spain, concluded on the 22d day of February, 1819; and that it was not allowed, in whole or in part, under the provisions of the treaty between the United States and France, concluded on the 4th day of July, 1831.

CONCLUSIONS OF LAW

The court finds as conclusion of law that Samuel Hollingsworth has a valid claim to indemnity upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800, and was entitled to the sum of \$5,960.50, and that the claim was relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States.

The conclusions of law which in our judgment affect the liability of the United States therefor are set forth in the opinion of this court delivered the 17th and 24th of May and the 6th of December, 1886.

The Ship *Theresa*

No. 142. R. Stewart Strobel and Henry L. Bruns, administrators of Thomas Stewart.

FINDINGS OF FACT

This case, involving a claim under the act of January 20, 1885, was heard before the Court of Claims in May, 1886. The claimant was represented by William E. Earle, Esq., and the defendants by Hon. Benjamin Wilson, assistant attorney. After hearing the parties, their proofs and arguments, the court from the evidence finds the facts to be as follows:

I. In 1797 Thomas Stewart, a citizen of Charleston, S. C., was the owner of the ship *Theresa*. The *Theresa* was duly registered as a vessel of the United States. In the same year, under the command of James Brown, the master, she sailed, in ballast, upon a lawful voyage from London to Nantes, where she was to take in a cargo of salt. She bore a letter from Mr. King, the United States minister to Great Britain, to P. F. Dorbee, vice-consul of the United States at Nantes. Arriving at Nantes she was seized by the French marine officers, and, on April 25, 1798, condemned by the tribunal of commerce, whereby she became lost to the owner.

II. The *Theresa* was condemned "upon the plea of the want of a muster-roll or *rôle d'équipage*." The legality of condemnation for this cause, the liability of France to make restitution, and the transfer of such liability to the United States by the operation of the treaty of 1800, were considered by the court and ruled upon adversely to the defendants in the case of *William Gray, Administrator, v. The United States*, No. 7 of these claims.

III. The value of the *Theresa* was \$6,350. The claim has never been assigned, nor is it embraced in the convention between the United States and the French Republic concluded on the 30th day of April, 1803; nor to such claims growing out of the acts of France as were allowed and paid, in whole or in part, under the provisions of the treaty between the United States and Spain, concluded on the 22d day of February, 1819; nor to such claims as were allowed, in whole or in part, under the provisions of the treaty between the United States and France concluded on the 4th day of July, 1831.

IV. The claimants were duly appointed administrators *de bonis non*

of the estate of Thomas Stewart, deceased, by the probate court of Charleston County, S. C.

CONCLUSIONS OF LAW

The court finds as conclusion of law that the said Thomas Stewart had a valid claim to indemnity upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800, and was entitled to the following sum of \$6,350, and that the claim was relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States.

The conclusions of law which in our judgment affect the liability of the United States therefor are set forth in the opinions of this court delivered the 17th and 24th of May and the 6th of December, 1886.

The questions submitted by the counsel for the defendants on the present motion were the following:

1. Whether the ship's paper called a *rôle d'équipage*, or muster roll, or crew list, was properly exacted of the original claimants by the French admiralty courts.
2. Whether the original claimants were excused from an exhaustion of their remedies against the privateer owners in France.
3. The question of the conclusiveness against the original claimants of the admiralty condemnations in France.
4. Whether there was war between France and the United States at the time these claims arose, and how that fact affected their validity.
5. Whether the French Government ever admitted the validity of the present claims.
6. Whether this Government bargained away and appropriated the present claims while pending against France.

Mr. Solicitor-General Jenks, for the defendants, requested the court to find the following conclusions of law:

1. That the act of the 20th of January, 1885, submits to this court two questions for its consideration and report: (a) The validity of the claims presented as against France. (b) Such facts and conclusions of law as may affect the liability of the United States therefor. (23 Stat. L. 283, § 1, 3.)

2. That the court, in its report and conclusions of law, is required to conform to the rules of law, municipal and international, and the treaties of the United States applicable to the case. (23 Stat. L. 283, § 3.)

3. That the acts of Congress of the United States, unrepealed, within the limits of the Constitution, are conclusively obligatory upon this court as law in this case.

4. That this court is not empowered under the law to go behind an act of Congress, unrepealed, to inquire into the motives, reasons, or facts which induced the passage of the act, and pass upon the verity or sufficiency of the facts, motives, or reasons which occasioned the legislative power to pass it, or decide, because it may differ with the legislative power as to the verity of the facts and the sufficiency of the reasons, therefore the act regularly passed, approved, unrepealed, and within the limits of the Constitution, is not law. (*Osborne v. U. S.*, 7 Wheaton, 866; *Fisher v. Blight*, 2 Cranch, 390; *U. S. v. Wiltberger*, 5 Wheaton, 95, 105.)

5. It is a prerogative of sovereignty to judge and determine conclusively whether war is justifiable; and when a sovereign so determines it is conclusive on the whole world. (Story on the Constitution, § 207.)

6. France, at the time of the seizure of the property for which claim is made, was a sovereign nation, and, as such, had a right to determine conclusively as to the United States whether her status should be that of peace or war; and if the latter, whether it should be general or limited; and, in either event, the principles of international law applicable to the status she selected are those which should control in determining her liability for the property for which claim is made. (*The Charming Betsy*, 2 Cranch, 118; 1 *id.* 28-39; 3 Wheaton, 315.)

7. That the deliberate act of France by which she authorized the seizure by force, the condemnation, and confiscation of the merchantmen and armed vessels of the United States, under which the property claimed in this case was seized, was the actual assertion and exercise of a belligerent power, and, as such, constituted a maritime war on her part against the United States. (*Bas v. Tingy*, 4 Dall. 39, 40, 41; Dana's Wheaton, § 291.)

8. That the right to redress by the United States or her citizens for the seizure of the property claimed should be determined by the principles of international law, as applicable to a nation engaged in a maritime war. (*Talbot v. Seeman*, 1 Cranch, 28.)

9. That during the existence of a maritime war, if a vessel and cargo of a citizen be seized by one of the belligerents, and be not recaptured by one of his own nation, his title is gone; and, unless by the treaty which terminates the war the rights are reserved, or indemnity is provided for or received for the seizure, he has no valid claim for his loss. (*Vattel's Law of Nations*, 385, 386; 2 Blackstone, 400; 8 Cranch, 145.)

10. The determination as to whether war is justifiable and exists belongs, under the United States Government, to the political departments of the Government, and their determination is conclusive as law on the judiciary. (2 Black, 670; 12 Wall. 702; 15 *id.* 560, 561.)

11. If the political departments of the Government enact such laws, make such proclamations, as authorize the forcible capture of the property of another nation on the high seas, make conquests, and condemn the property captured as booty, it is a political determination of the existence of war. (Prize Cases, 2 Black, 670; 12 Wall. 702; 15 *id.* 560.)

12. The act of Congress of the 9th of July, 1798, and other similar acts, at and about the same time, in pursuance thereof, followed by the capture and condemnation of the property of the French, and other warlike acts of retaliation by force, is a conclusive determination by the political departments of the Government that war existed by the United States against France. (*Bas. v. Tingy*, 4 Dall. 42, 43, 44, 46; 1 Cranch, 28, 31.)

The syllabus in *Bas v. Tingy* is as follows:

Under the seventh section of the *Act of March 2, 1799* (1 Stat. L. 716), France was to be deemed an enemy of the United States in March, 1799, and a French privateer having captured an American vessel, a public armed vessel of the United States was entitled to salvage or recapture.

The opinion declares as follows:

The decision of this question must depend upon another, which is whether, at the time of passing the act of Congress of the 2d of March, 1799, there subsisted a state of war between the two nations. It may, I believe, be safely laid down that every contention by force between two nations, in external matters, under the authority of their respective Governments, is not only war, but public war. If it be declared in form, it is called solemn, and is of

the perfect kind ; because one whole nation is at war with another whole nation, and all the members of the nation declaring war are authorized to commit hostilities against all the members of the other in every place and under every circumstance. In such a war all the members act under a general authority, and all the rights and consequences attach to their condition.

But hostilities may subsist between two nations, more confined in its nature and extent, being limited as to places, persons, and things, and this is more properly termed imperfect war, because not solemn, and because those who are authorized to commit hostilities act under special authority and can go no farther than to the extent of their commission. Still, however, it is public war, because it is an external contention by force between some of the members of the two nations, authorized by the legitimate powers. It is a war between the two nations, though all the members are not authorized to commit hostilities such as in a solemn war where the Government restrain the general power.

Now, if this be the true definition of war, let us see what was the situation of the United States in relation to France. In March, 1799, Congress had raised an army, stopped all intercourse with France, dissolved our treaty, built and equipped ships of war and commissioned private armed ships ; enjoining the former and authorizing the latter to defend themselves against the armed ships of France ; to attack them on the high seas, to subdue and take them as prize, and to recapture armed vessels found in their possession.

What, then, is the evidence of legislative will ? In fact and in law we are at war. An American vessel fighting with a French vessel to subdue and make her prize is fighting with an enemy, accurately and technically speaking ; and if this be not sufficient evidence of the legislative mind, it is explained in the same law. The sixth and the ninth sections of the act speak of prizes, which can only be of property taken at sea from an enemy, *jure belli* ; and the ninth section speaks of prizes taken from an enemy, in so many words, alluding to prizes which had been previously taken. But no prize could have been then taken except from France ; prizes taken from France were, therefore, taken from the enemy. This, then, is a legislative interpretation of the word enemy ; and if the enemy as to prizes, surely they preserve the same character as to recaptures. Besides, it may be fairly asked, Why should the rate of salvage be different in such a war as the present from the salvage in a war more solemn and general. And it must be recollected that the occasion of making the law of March, 1799, was not only to raise the salvage, but to apportion it to the hazard in which the property retaken was placed, a circumstance for which the former salvage law had not provided.

The two laws, on the whole, can not be rendered consistent unless the court could wink so hard as not to see and know, that in fact in the view of Congress, and to every intent and purpose, the possession by a French armed vessel of an American vessel was the possession of an enemy, and, therefore, in my opinion, the decree of the Circuit Court ought to be affirmed.

But by the acts of Congress an American vessel is authorized: 1st. To resist the search of a French public vessel; 2d. To capture any vessel that should attempt by force to compel submission to a search; 3d. To recapture any American vessel seized by a French vessel; and 4th. To capture any French armed vessel wherever found on the high seas.

An imperfect war, or a war as to certain objects and to a certain extent, exists between the two nations; and this modified warfare is authorized by the constitutional authority of our country. It is war *quoad hoc*. As far as Congress tolerated and authorized the war on our part, so far may we proceed in hostile operations. It is a maritime war, a war at sea as to certain purposes. The national armed vessels of France attack and capture the national armed vessels of the United States; and the national armed vessels are expressly authorized and directed to attack, subdue, and take the national armed vessels of France, and also to recapture American vessels.

Now, is that the truth or is it false? Is that law to this court or is it not law; and was not that a capture exactly like this of the *Sally*? But if it were a war and the laws of war apply, there was no title, no right of recovery whatever left in the owner of the *Sally* twenty-four hours after she was taken under general international law. Under our statute there was none at all, unless on recapture. The same view is expressed in another form by each and every justice in that cause. Now, if you will take that case and make any possible distinction between the case of *Bas v. Tingy* and this case at bar, it is more than I am capable of making on principle, because you will have to find it was captured just as the *Sally* was.

13. The United States having elected to redress the wrongs France had done her and her citizens by retaliation—a warlike measure—and having actually obtained redress in that way, can not afterwards, in the absence of treaty stipulations, deny the justice of the judgment in this last and highest tribunal of nations, nor claim another remedy and payment for the same wrong. (Treaty of 1800, Rev. Stat., § 225; Vattel, 437, 438.)

14. The claim in this case, if any existed, having then been redressed by the war measures of retaliation as against France, is barred by the redress received in the judgment of that court of last resort.

15. When a sovereign appeals to the judgment of the tribunal of war, that appeal is final and conclusive as to the parties in the controversy and all their citizens as to the subject-matter of the dispute, and is conclusively presumed to be fully executed in the treaty by which the appeal is terminated.

16. That by the treaty of 1800 as ratified, no rights of the citizen were reserved, nor any indemnity provided for or received; but both the United States and France expressly renounced their respective pretensions to indemnity for past alleged wrongs committed by either. (Rev. Stat., § 232.)

17. That the very cause of the warlike measures determined upon by the United States as against France, which was terminated by the treaty of 1800, was the capture, condemnation, and destruction by the French of American vessels and cargoes, in which was included the property claimed by the petitioner in this case. (Rawle on the Constitution, 109.)

18. That under the law and facts of this case, the claimant had no right, at, immediately before, or after the treaty of 1800 to indemnity for his claim against France.

19. A nation, by the compact of Government, does not insure against nor agree to indemnify its citizens for all wrongs done them, either individual or national. (Vattel, 402, 403.)

20. The fact that the United States did not require an indemnity of France for the spoliations committed on the commerce of her citizens does not impose on the United States the legal duty of paying all or any claims for which she as a sovereign did not see fit to demand indemnity.

21. That the judgment of the political departments of the Government in making and ratifying the treaty of 1800 being a political act, and within the jurisdiction of the political departments, is, as law, conclusive on this court; and this court is not empowered to reopen the justice or expedience of the treaty, nor to rejudge it on any grounds. (*Williams v. Suffolk Insurance Co.*, 13 Pet. 420; *Phillips v. Payne*, 92 U. S. 132. *The Amiable Isabella*, 6 Wheat. 72.)

22. That by the act of Congress of the 7th of July, 1798 (1 Stat. L., p. 578), the treaty of 1778 between the United States and France was

annulled, and France, after the passage of the act, had no lawful claim against the United States for or on account of that treaty, or for or on account of any breach or infringement thereof. (1 Stat. L. 538; Rawle on the Constitution, 109; *Chirac v. Chirac*, 2 Wheat. 272; *The Charming Betsy*, 2 Cranch, 118.)

23. That under the law and treaties in this case no claim of France against the United States for any breach or infraction of the treaty of 1778 was paid by set-off, defalcation, or compromise of any rights, if such existed, which this claimant had against France for spoliation.

24. That at the time negotiations for the treaty of 1800 were had between the United States and France, no treaty existed between them, nor any treaty obligation.

25. The United States, by the treaty of 1800, did not receive, reserve, nor stipulate for any additional redress for the alleged wrong claimed in the case of the petitioner; but, upon its ratification, expressly renounced its pretensions of claim therefor. (Rev. Stat., 43d Cong., Post Roads and Treaties, p. 232.)

26. That the claimant in this case has no legal claim or right against the United States.

Mr. B. Wilson, for the defendants, proposed the following additional requests:

1. That international law concerning neutral commerce required, as proofs of the neutrality of a vessel, the same proofs which are mentioned in the treaty of 1778, which are, 1st, the certificate of the several particulars of the cargo (Ordinance of 1681; Chitty's Com. Law, 487; DeMartens' Armateurs, § 21); 2d, a passport (Chitty's Com. Law, 487); Ordinance of 1681; 3 Phillimore Int. Law, 734, cases there cited); 3d, the certificate of the ownership of the vessel (regulation of the Hanseatic League, 1369); 4th, the report or *procès-verbal* of the captain of what was done during the voyage (Boucher Droits Maritimes, §§ 368, 498; Emérigon, sec. tom. 1, fol. 276); 5th, the carrying of the flag of the country to which the vessel belongs (1 Rob. Adm. Rep. 1, 19, 161); 6th, the *rôle d'équipage* (Règlements of 1704, 1774, 1778; Chitty's Com. Law, 487; Valin, Traité des Prises, etc.).

2. That the treaty of 1778, so far as the proofs of neutrality or innocence were concerned, was therefore declaratory of international law already existing and to be interpreted accordingly.

3. That the treaty required a *rôle d'équipage*, or list of the crew,

giving the names and places of birth of the crew and of all who should embark on board, duly authenticated by the officers of the Government.

4. That the object of such a list, not being stated in the treaty, is to be sought for in international law, and is there declared to be to prove the neutrality of the crew. (DeMartens' *Armateurs*, § 21; Chitty's *Com. Law*, 487.)

5. That the Government of the United States having failed and refused to live up to the offensive and defensive alliance (treaty of 1778) existing between it and France, and proclaimed itself neutral, it was competent for the French Government to recognize us as neutrals, and thereafter legal for the French courts to treat our vessels as those of neutrals were to be treated under international law, and no longer as those of allies, disregarding anything in the treaties arising out of the favored position of allies.

6. That when the vessel of a belligerent captured any suspected vessel, the question of prize belongs exclusively to the jurisdiction of the courts of the captor's country. (9 Cranch, 359; 1 Wheat. 238; 2 Gallison, 29.)

7. That where there is probable cause of capture, *i. e.*, circumstances to warrant a reasonable suspicion of illegal conduct, the captors are justified and exonerated from all losses and damages sustained by reason of the capture, and the burden of proof is on the captured. (*The Rover*, 2 Gallison, 240; *Maissonnaire v. Keating*, 2 Gallison, 336; *The George*, 1 Mason, 24; *Shattuck v. Maley*, 1 Wash. C. C. 248.)

8. In the prize court the *onus probandi* rests on the captured. (*The Amiable Isabella*, 6 Wheat. 77; 3 Phillimore *Int. Law*, 723; 8 Cranch, 155.)

9. That as the neutrality or innocence of the property of the claimant was not proven beyond a reasonable doubt, it was rightly condemned. (*Id.*)

10. That municipal laws to enforce a nation's rights under international law are *facts* of the relations of two nations, and *acts* performed by a nation, of which the prize court takes notice in order to enforce international law as applicable thereto; that this was done in the cases of the present claimants, and the condemnation of this property was not rendered illegal by such procedure.

11. That claimants had no valid claim against France, for the reason, among others, that they did not exhaust their remedies in the French

courts by appeal or action upon the bond and against the property of the captor.

12. That not to appeal from the decision of the inferior court condemning the claimant's vessel was an acknowledgment of the justice of the sentence and conclusive. (Lee on Captures, 220.)

13. It is universally admitted that the decree of a prize court is conclusive against all the world as to all matters decided and within its jurisdiction. (17 Otto, p. 80, authorities there cited; note, *Cushing v. Laird*. See also Article 5, French and United States Treaty, 1803.)

14. That it is contrary to public policy to ask a nation to reprobate the long-continued conduct of its political department. (Ellsworth, Ch. J., quoted below; also Vattel, bk. 2, ch. 7, § 85.)

15. That the capture of claimant's property was an act of war, and as such gave rise to no valid claim for indemnity. (Vattel, bk. 3, ch. 13, § 190; 1 Rob. Adm. Rep. 581; 3 Dallas, 226, 227, etc.)

16. That to render a war lawful, and legalize the damage done in the course of it, no declaration is necessary. (Bynkershoek on the Law of War, ch. 2; Grotius, lib. 3, ch. 3, § 6, notes 1 and 2.)

17. That when a state authorizes reprisals for national injury to be made by an indiscriminate seizure of the property of the subjects of another, this order is equivalent to a declaration of war. (Dana's Wheaton, § 291.)

18. That in recognizing that France was at war against us we recognized that the laws of war were applicable to her proceedings, and were estopped to claim that they were piratical. (1 Stat. L., act of July 9, 1798; *Bas v. Tingy*, 4 Dallas, 38; 1 Cranch, 1.)

19. That the political departments of the Government having recognized that France was at war in respect of the seizures of our vessels, the courts can not consider as piratical those acts of hostility which were so directed against our vessels. (*U. S. v. Palmer*, 6 Wheaton, 634.)

20. That the confiscation of enemy's vessels and cargoes is lawful under the law of nations, and rests upon the sound discretion of the national sovereign. (8 Cranch, 145.)

21. That the property of the subjects of one nation may be confiscated by another, after a failure to satisfy for an injury and without a war. (Vattel, bk. 2, ch. 18, § 342; Dana's Wheaton, § 290; Klüber, *Droits des Gens*, § 234, note C; Burlamaqui, *Droits des Gens*, pt. 4, ch. 3, § 42.)

Mr. William E. Earle, having participated in the original argument for claimants and filed printed briefs, submitted the following propositions:

I. That certain claims of American citizens have been released to France. This we established by the treaty of 1800, and by the correspondence and negotiations relative thereto, as officially published in Ex. Doc. 102, 1st sess., 19th Cong.

II. That these claims for indemnity were valid against France, and that her liability for them was admitted by France. This we have established by well settled principles of the law of nations and the treaties between the two nations, and the evidence in Ex. Doc. 102.

III. That the United States released to France these claims of American citizens "for a valuable consideration for the public benefit," ignoring the rights of individual citizens who had suffered by the spoliations. This we have established by the treaty of 1800, and the correspondence and negotiations as to it, as published in Ex. Doc. 102, and the proceedings of the two nations as to its ratification.

IV. That the release by France, of her claims for indemnity, for the failure to keep the treaties of 1778, and for making the Jay treaty, in 1794, was to the United States a "valuable consideration," for their release to France of these claims of their citizens against her. This we have established by the official correspondence published in Ex. Doc. 102, and the treaties of 1778, and well recognized principles of the law of nations.

V. That whilst prize courts may hold themselves bound to administer the local laws and regulations of their own country, and whilst their own decrees are final as to property in *the res*, yet their judgment is the act of their government, and a valid diplomatic claim rests upon it, if the condemnation is in derogation of the law of nations or impairs a treaty. This we have established by decisions of our Supreme Court, and by the settled law of nations.

VI. That in the treaty of 1800, the governments of the two countries came together in an adjustment of their differences or "misunderstanding," as on the basis of the continued existence of the treaties of 1778, and agreed "to negotiate further" as to those treaties and the mutual claims for indemnity for their mutual violations of them; and subsequently, in its ratification, the United States secured a release from the future obligations of the treaties of 1778 and their liabilities for having failed to observe them, in con-

sideration of a release to France of their claims for reclamation of American citizens. The bargain was not only a set-off of the mutual claims to indemnity, but a release to the United States from these treaties for the future.

VII. That war leaves the right to captured property with the possessor at the time of the signing of the treaty; but in view of the fact that there had been no war, this treaty mutually restored all captures on hand.

VIII. That the question arises as to what cases come within the class of those released to France, in the bargain effected by the rescission of the second article, and were therefore valid claims against France, and not excluded by the terms of the exceptions relating to the three other treaties, as declared in the terms of the jurisdictional act, referring these claims to this court. And the answer to this is, all "for illegal captures, detentions, seizures, condemnations, and confiscations, made prior to July 31, 1801," which do not come within one of the three exceptions of the jurisdictional act, and which were made in violation of the treaties between France and the United States, and in violation of the law of nations. And this answer must be applied to the state of facts established by the evidence in each particular case.

IX. That most of these condemnations were based on the want of a *rôle d'équipage*, which was required by the ancient maritime regulations of France, and this regulation was reenacted after the treaties of 1778. The civil tribunals on appeal from the tribunals of commerce, held that this regulation was binding on the courts of France without regard either to the treaties or to the laws of nations. These condemnations, we maintain, were not only in violation of the treaty but of the law of nations.

X. That condemnations because the captain or mate was foreign-born, though a naturalized American citizen, were in violation of the law of nations.

XI. That condemnations for running a blockade were unlawful, for it is a well-established historical fact that the French had not a blockade in the West Indies, and the very proclamations of blockade themselves, show that they were *brutum fulmen* and mere pretexts for making captures.

XII. That the few remaining captures were on the ground of carrying British productions or trading to British ports, both whereof are indisputably in violation of the treaty and are in contravention of the law of nations.

XIII. An illegal condemnation by a prize court is the act of the government of that court, and the valid basis of a diplomatic claim.

Mr. William Gray, Mr. George S. Boutwell, Mr. Edward Lander, Mr. Lawrence Lewis, Jr., Mr. Samuel Shellabarger, Mr. Jere Wilson and Mr. Leonard Myers were also heard in support of the position taken by the claimants.

Argument of *Mr. B. Wilson* for the defendants:

The third section of the jurisdictional act January 20, 1885, provides that this court "shall decide upon the validity of said claims according to the rules of law, municipal and international, and the treaties of the United States applicable to the same, and shall report all such conclusions of fact and law as in their judgment may affect the liability of the United States therefor."

By the sixth section it is provided that such finding and report shall be only advisory.

Congress wants no information from the court, but positive fact and positive law, and when the court finds such a thing is the fact and such a principle is the established law, and so report to Congress, that body proposes to take action according to its own wisdom upon the report so made. For example, the Supreme Court, interpreting the acts of the political department, have settled the question as to war in all its bearings, and the law to be that it was such a war as authorized captures and condemnations as prize and made one government the enemy of the other. (4 Dallas, 38; 1 Cranch, pp. 1-9, 31, 32, 39, 40, 41.) What more can be done but to report accordingly? Again, the Supreme Court (*Ware, Administrator, v. Hylton, et al.*, 3 Dallas, 258, 1796) have settled the law of nations to be that treaties between sovereign powers when broken by one are voidable at the option of the other; and in *Chirac v. Chirac*, the same court, Marshall, Ch. J., delivering the opinion, held that in 1799 no treaty was in existence between France and the United States. (2 Wheaton, 272.)

What can be done by this court but report that such is the law on that subject? In the same manner, by reference to standard authorities, should all other legal principles be ascertained and reported, as, for example, the *conclusiveness* of prize adjudications (*Cushing v. Laird*, 107 U. S. 69), and *invalidity* in law of claims, based

either upon such adjudications (Lord Eldon in 2 Swanston, 576) or upon acts of war, and the necessity of *exhausting* remedies in the courts in such cases (other than *prize* cases, however), where valid claims *may* exist. All these things are settled *law*, and operate favorably to the United States in this matter. Special exemptions from the general law must be specially pleaded and proven. For example, if some of the captured were prevented from exhausting their remedies, and it appears that all were not, it is incumbent on each claimant to show that he was so prevented. The burden must be on some one to show it, and he who asserts a fact must prove it, and not he who denies it prove the negative. Most, practically all these claims would be invalid for want of exhaustion of remedies, if not already invalid because prize judgments are conclusive and final.

The facts to be reported are, of course, the when and how, where and why, seizures and captures were made by the French. These being found, then the question of law arises, were they illegally made? Were they made in pursuance of international law? It is not pretended that they were made without authority of French law. But it is pretended that France had no right under the law of nations to pass such laws. If this was pretended of the laws of Congress in 1798 authorizing condemnation of French property we should call the pretense an absurdity. However, were the laws illegal according to international law? Upon what alleged right of France were they based? Evidently on the right, which every nation has, of using force to retaliate upon another nation which she believes to have deprived her of her rights secured by treaty, and to have wronged her otherwise. Was this using of force by France for such a purpose legal or illegal? Vattel and Grotius, and other writers on the law of nations, tell us that such laws are proper, and that it is for every sovereign nation to decide for itself when they ought to be passed, not because might is right, but because there is nobody else to decide the question. If the law is right and proper, was it legal to enforce it in the courts? To ask such a question is to answer it. The right of a sovereign to enact such laws is as well settled as any international question can be.

When the commander of a French vessel captured an American vessel there was only one legal way to determine whether he had legally captured her, and whether she was *lawful* prize under the treaties and the law of nations, and that was by trial in a prize court

of the captor's country; so says the law of nations. That trial and the finding were not only legal, but the only legal ones possible. Any other trial and a finding, in any other kind of court, in any other country, would have been illegal, but not this. This is another conclusion of the law of nations which affects the liability of the Government of the United States when subrogated to the liability of France. Prize judgments are not disregarded by international commissions created by the *consent* of nations, because they are, properly speaking, illegal, but for reasons of diplomacy and compromise. For example, the Alabama Commission, as one of the opposite counsel stated, disregarded decisions of the Supreme Court in prize cases. The reports of those Commissioners show that the correctness and legality of the court's decisions were not disputed, but *under the treaty* they were to decide according to *abstract justice* rather than according to *law*. Law works absolute justice in most cases, but fails to do so in the exceptional cases. Nations can *waive* their right to the enforcement of law in such exceptional cases.

This was proposed by American envoys for France to do in 1800, but she refused because we did not agree to her propositions. In the Alabama cases the waiver was agreed upon. That consent could *rightly* have been withheld, and the *law* insisted on, but *policy* induced the contrary. To quote from the argument used in those cases:

It was further maintained on behalf of the claimants that, under the treaty of Washington, the Commissioners were not constituted a tribunal which in prize cases had a merely appellate jurisdiction to review the judgments of the prize court of last resort; that the Commissioners had, by the *terms* of the *treaty*, greater and more absolute power to do justice than was or could be exercised by the prize courts of the United States; and that even if the Commissioners should be satisfied that upon the record presented to the prize court, the facts disclosed *warranted* condemnation under the *law of nations*, yet if they found, under all the circumstances of the case, that in *justice and equity* the claimants were entitled to indemnity, it was their solemn duty to award it, even though it were in the face of the technical rule of the prize courts.

As stated, nations may waive their right under international law, and reach results mutually satisfactory by diplomacy, but diplomacy is not international law.

This can only be done by consent of sovereign nations, and money

paid upon claims thus admitted or *created*, is a gift or donation for purely political and diplomatic reasons (2 Swanston, 576). France did not waive her legal right as to the conclusiveness of the judgments of her prize courts, nor to the necessity for claimants to exhaust their remedy by appeal or otherwise, nor as to the effect of the public maritime war between the two nations. She declined to waive these rights, because we refused to revive without modification the ancient treaties.

As to the alleged admissions and the statements made and omitted in the notes exchanged between the French and American negotiators of the treaty of 1800, embraced between pages 580 and 637, Senate Ex. Doc. 102, 19th Cong., 1st sess., a perusal of those pages with care and anxiety does not reveal either the admissions or omissions relied on by claimants. Neither any waiving of the exhaustion of remedies by France, nor any admission of the validity of the claims, occurs anywhere in that negotiation. The various proposals and counter-proposals, being mere diplomatic chaffering, might explain, but could not alter, what was done. Claims for indemnities due *or* claimed were renounced (that is, as the word means, *withdrawn*), and Congress has asked this court to determine, under international law and the treaties, which were also *law*, whether they were due or not.

The American envoys (Ex. Doc. 102, 19th Cong., 1st sess., p. 587, etc.), admitted the following rights of France under the law of nations by asking her to *waive them*, viz., the conclusiveness of prize judgments (*i. e.*, the exclusiveness of prize jurisdiction in the *capturing* Government), the right to construe for itself the treaty of 1778, as to the *rôle d'équipage* and the right to pass the retaliatory decree of January 18, 1798. The principle of conclusiveness of judgments actually was incorporated in the treaties of 1800 (Art. 4) and 1803 (Art. 5), and the necessity for exhausting remedies into the latter treaty (Art. 4), for payments were to be made in cases "appealed within the time necessary." (See the treaty in French, 8 Stat. L.) The proposition to waive her rights was responded to by France with the proposition that the hostile measures, including the abrogation of treaties, must be *receded from*; for, of course, if the nations did not now agree that they had been at peace, no indemnities would be due for hostile acts. They must first of all settle what their status had been and was now—peace or war. If peace, what had been done that was of a hostile character would thus be adjudged to be illegally and piratically done, and indemnities might be due; but if war, the ravages

of *war* give rise to no indemnities. The two nations, disregarding the unauthorized makeshift reported by their respective agents in the second article, adopted the latter alternative—war, and no indemnities due. It had to be called war or piracy on both sides, and the President and Senate, with the concurrence of France, adjudged that it was not piracy, but war. The Chief Justice, Ellsworth, our principal envoy, had said to the President: "Having given your draft of instructions such perusal as the hurry and pressure of a court crowding two terms into one admits of, I remark, with all the freedom you invite, that to insist that the French Government acknowledge its orders to be piratical, or, which is the same, absolutely to pay for depredations committed under them, is, I believe, unusually degrading, and would probably defeat the negotiation, and *place us in the wrong*." (2 Flanders' Chief Justice, 236.)

One's eyes must be shut to all the rights of France as a sovereign, and all the plainest law of nations, and the decisions of our Supreme Court, not to see the *legality* of the laws passed by France in retaliation for our injuries to her and to force us to fulfill the treaties we had violated and refused to fulfill. The Supreme Court said the nations were in a state of *public war* authorized by *both* Governments. One of its reasons for deciding was, that war and only war, could justify the depredations, confiscations, and bloodshed, on either side, and the honor of both nations required it to be called war. Now, is it not necessary to establish these eight propositions before declaring the condemnation of these ships illegal?

(1) That the treaty did not require the crew-list when it mentioned the crew-list.

(2) That the French court had no right to construe the treaty according to its own understanding of it.

(3) That the French Government had no right to pass the retaliatory decree.

(4) That the French courts had no right to decide whether the French Government had such right under international law.

(5) That the treaty, though violated by us, was still binding in all its details on France.

(6) That the treaty dispensed with all proofs except the passport, which it said *must* be on board.

(7) That the judgments of prize courts are not exclusive and conclusive against all the world.

(8) That there was peace.

Allow all of these eight propositions, and it may be admitted that the condemnation of these vessels was illegal. Deny any *one* of them, and these cases must fall to the ground. It is said by counsel that the decisions of the French courts as to these captures were always against the Americans. Perhaps international law was likewise against them. They were found violating belligerent rights of France. But in no less than three out of the four or five cases exhibited here merely to show the jurisdiction of the court of cassation, the supreme court of error in France, the vessels of these Americans were released. But it is said the inferior tribunals at least always decided against the captured. This is also erroneous, for we have here a list of cases from St. Domingo decided in 1797 and 1799, and out of a little over a hundred captures of suspected vessels there were thirty-three releases. It is in St. Domingo that the French are charged with being most lawless.

In the midst of the most bitter war ever waged between France and England, the English courts never in any case disputed the conclusiveness of French prize judgments. It is true that they decided that neutrals were saved from danger when recaptured from the French; and so said Napoleon; so said our Supreme Court in 1 Cranch, 1. But Napoleon said that the injustice of the French laws, so far as they affected real neutrals, was just retaliation as regarded the Americans, for their Jay treaty, and our Supreme Court, in that very case, decided that France and America were enemies and at war.

The whole world, it is said, are *parties* to an admiralty cause, and, therefore, the whole world is *bound* by the decision. So says Judge Marshall. (9 Cranch, 126.) "These sentences are admissible and *conclusive* between the assured and the underwriters as to *every fact* which they profess to decide." (B. & P. 20.) If a ship is condemned as enemy property, whatever "ordinances" may be referred to, it is conclusive. (5 East. 155.) If the court comes to the conclusion that the vessel is not neutral, it is quite *immaterial* through what media it arrived at it. (Lord Mansfield, 2 Taunton, 85.) If infraction of treaty be the ground, the condemnation is legal and conclusive, although, where a treaty required certain documents on the ship, *municipal laws* were referred to as showing what the treaty required, and although the court "construed the treaty iniquitously." (Lord Ellenborough, 5 East. 99.) If the court, by the aid of the ordinances of its country, reached the conclusion that it was enemy property, it is

conclusive. The sentence is conclusive if based on breach of treaties, however there may not have been such a breach. (*Id.*; Piggott, *Foreign Judgments*, 258; 4 Cranch, 433.) *Croudson, et al. v. Leonard, Johnson, J.*, delivering the opinion, held: "I am of the opinion that the sentence of condemnation was *conclusive* evidence of the *commission of the offense* for which the vessel was condemned." In 6 Mass. Reports, 277, *John Baxter, et al. v. The New England Marine Insurance Company*, it was held: In an *action upon a policy of insurance*, the sentence of a foreign court of vice-admiralty, condemning the ship insured for a breach of blockade is conclusive evidence of the *fact of such breach of blockade*. (8 Term Rep. 192; *id.* 434; 2 Douglas, 575; 6 Bee's U. S. Rep. 165, affirmed on appeal; 7 Term Rep. 681; 2 Shower, 232; 3 B. & P. 201; *id.* 499; 2 Taunton, 7, 35; 8 Mass. 536.)

The honorable Chief Justice inquired whether all the cases cited as to conclusiveness did not apply to private parties, as distinguished from sovereign nations.

The litigants were private parties in these cases; but Chief Justice Ellsworth and our other envoys claimed no such distinction when they asked the Government of France to waive the principle. The two nations, when they negotiated the treaty of 1800 (Art. 4) and the treaty of 1803 (Art. 5), recognized that the principle applied between nations. We have only to look at the reason for this principle. What is the reason? Harmony, peace, concession to the universal welfare of mankind; that which in our municipal cases is called the policy of the law. It is the policy of the law of nations. If the political department of one nation could erect itself into a court of appeals to reverse the decisions of the supreme court of another nation having by international law jurisdiction of the parties and subject-matter, what litigant could ever be satisfied until his country had become involved in war? (Reference is made on this point to Douglas, 619 and 617, and treaties there cited. Also, to the treaty between Great Britain and Denmark, July 11, 1670, article 37; treaty between Russia and Great Britain, October, 1801, article 2; treaty between Louis XIV and Great Britain, 1677, article 12; treaty between the Netherlands and Charles II of England, 1647, article 12; same parties, 1668, article 16. Also Piggott's *Foreign Judgments*, 249; Vattel, b. 2, ch. 7, § 85; 9 Cranch, 126; *Campbell v. Mullett*, 2 Swanston, 576, 577, 578, 579, 584, 585; also, article 5, treaty of the United States and France, 1803.)

The treaties referred to recognize that the jurisdiction of prize belongs exclusively and finally to the capturing Government. For instance: "If the King of France shall complain of the unjustness of sentences which have been given concerning the ships or merchandise taken at sea (or of the wrong interpretation of the treaty by the courts), the King of Great Britain shall forthwith commission under his great seal nine of his privy counsel to adjudge such matters and to confirm or revoke these sentences." So we see that according to the theory of these treaties unless the Government of the captor does not choose to reverse the decision of his own courts their decisions stand conclusive against the other nations. Such is the law of nations as to prize judgments. This does not prevent a nation from claiming anything it may desire or another nation from granting what is claimed if it sees fit.

DAVIS, J., delivered the opinion of the court:

This case, with others like it, was fully argued at the last term, and after careful study and industrious conference an opinion was delivered upon the general principles applicable to the claims as a class, while final and detailed findings were delayed, at the defendants' request, until after the summer recess. During this recess the law officers of the Government, diligently and jealously guarding the interests intrusted to them, have carefully studied not only the facts of the several cases, but have reexamined the general principles applicable to the claims as a class—principles understood to have been finally settled, so far as this court is concerned, by the former decisions.

The defendants now move for a rehearing, and somewhat contrary to the usual practice, but in furtherance of the substantial ends of justice, a full, able, and learned argument, occupying nearly two weeks, has been had, in which all the questions heretofore considered have again been exhaustively discussed. Thus, upon a motion for permission to reargue the case, it has in fact been reargued, and in deciding the motion we act with all the light we should have received had the more technical course been pursued of first allowing the motion and then hearing the reargument.

The learned Solicitor-General, who has personally appeared with the assistant attorney of the United States who so competently conducted the defense of these claims, takes as the text of his argument certain suggested conclusions of law, twenty-five in number, many of

which may be readily admitted, either standing alone or in the connection in which they are used, without leading to a result different from that already reached by this court; while considered as a whole they form the successive links of a chain of argument which, if perfect, defeats all the claims submitted under the act of Congress.

Many of the difficulties surrounding these cases will disappear under the touchstone of the jurisdictional act, for it must always be remembered that we are not now to decide in accordance with the general statutes giving us exclusive jurisdiction of actions between the citizen and his Government founded on contract, nor yet under the special jurisdiction conferred by such laws as the "Bowman Act," by which, in aid of Congress, we report facts to that body or its committees, and facts and law to the Executive Departments for their "guidance and action;" nor under the jurisdiction given by Section 1063 of the Revised Statutes, which authorizes us to proceed to final judgment in claims of a certain nature transmitted to us by the heads of the principal Executive Departments. In all these cases we sit as a court bound to administer the law found in the Constitution, statutes, and common law of the United States as interpreted by the Supreme Court, and, so far as we have yet seen, not one of the spoliation claims could have the slightest pretense of a successful result were the investigation to be measured by the standard set for us in other causes. It can not be presumed that Congress, in passing the act of 1885, with full knowledge of the law and facts, intended an empty form; therefore it follows that they desired us not only to examine these claims, but to examine them in the light of some rule different from that upon which we must ordinarily proceed.

The statute says that those citizens or their legal representatives who had "valid claims" of a specified class upon the French Government, arising out of certain illegal acts committed prior to the ratification of the treaty of 1800, may apply to this court (§ 1); we are then to determine the validity and amount of these claims "according to the rules of law, municipal and international, and the treaties of the United States applicable to the same," but we can not enter judgment; on the contrary, after the hearing we may only report to the Congress such conclusions of fact and law as in our opinion may affect the liability of the United States for these claims (§§ 3 and 6), and this report is binding on neither the claimant nor the Congress (§ 6).

The first question presented, then, is as to the validity of the claims against France. This is an international question not within the scope or ordinary judicial inquiry, and is to be measured by rules of law well known, thoroughly recognized, and often enforced, but which in the very nature of things are not, in the absence of special legislative authority, presented to, argued before, or passed upon by the judicial departments of Governments. These rules of law relate to the rights and obligations of nations, not to the title to property, nor to the rights of individuals between themselves, nor yet to the rights of individuals against their own Governments.

While many of the propositions of the defense are in the abstract sound, they rest upon the basis that these claimants are prosecuting a legal right in a court of law acting under the usual common-law restrictions of such a tribunal sitting as a subordinate agent of the State with strictly defined procedure and jurisdiction. So far as power is concerned this court is not so sitting in these cases; "judicial power is the internal or civil branch of executive power exerting itself under such checks and controls as the legislative power has subjected it to" (11 Rutherford, 59); those checks and controls are well defined and well understood, and are such as operate to defeat in judicial tribunals diplomatic claims founded upon international right.

We are for the present, to a limited degree, absolved by express act of the legislature from these checks and controls.

That is, we are to aid the political department of the Government, by its direction, in the disposal of contentions which arise from past international transactions, and while the claims of individuals now before us are not, from a judicial point of view, legal rights—that is, they do not constitute causes of action—they may be none the less rights; that is, they may be founded on law but not enforceable in a court of law.

We do not intend to assume any legislative function or to determine any abstract right, for our power is fixed and defined by the Act of Congress, which authorizes no such course, but which does require something more than a bare opinion that there can be no recovery on these claims in the courts; that was known before the statute was passed, and the legislature have instructed us by that statute to advise them not as to the law enforceable in courts of law, not as to abstract rights, but as to the law enforceable within their own higher jurisdiction.

We have already held that the depredations made by France upon our commerce were illegal, and notwithstanding the able argument of the defense, sustained by the results of most industrious investigation, we do not see reason for changing this conclusion. The quotations in our previous opinion show that the Government of the United States uniformly insisted upon the illegality of the conduct of France and never failed to demand redress; they show that France admitted the principle of the American contention; that Spain paid claims of this class; that England did the same, and that by the principles of the law of nations aside from any definite compact such as that of 1778, the injuries to our commerce afforded good foundation for diplomatic demand. Upon the second branch of the case we held, and in support of the position cited copiously from the contemporaneous negotiations and instructions of the American Secretaries of State, and from the correspondence and journals of the American ministers charged with the protection of American interests, that by the cancellation of the second article of the treaty of 1800 the United States set off the spoliation claims against those claims which France had against us, claims which our representatives thought of so much gravity and of so much value as to authorize an offer, refused by France, of many millions of francs for a release.

It seems unnecessary to repeat those voluminous citations, or to add to them, from the mass of correspondence which we have read, extracts which would be merely cumulative. We have carefully re-examined the question in the light of the reargument, and nevertheless adhere to the conclusions reached last term after exhaustive discussion by counsel and patient and laborious investigation by ourselves, that these claims (as a class) were valid obligations from France to the United States, that the latter surrendered them to France for a valuable consideration benefiting the nation, and that this use of the claims raised an obligation founded upon right, and upon the Constitution (which forbids the taking of private property for public use without compensation), to compensate the individual sufferers for the losses sustained by them.

We do not decide nor have we attempted to decide that the conduct of the Government after the Revolution and prior to the treaty of 1800 was or was not wise, proper, or justifiable, questions which are within the domain of the historian, and have not been submitted to us; we advise, whether in performance of their public duties, and in

protection of the commonwealth, and in carrying out the directions of those having the right to give them, or in fulfillment of the powers and obligations conferred and imposed by the Constitution and laws, the statesmen of that period took such action in relation to private rights as raised an obligation on the part of the Government to compensate the citizen.

We are to see whether the claims urged on France were valid, whether each particular claim brought before us is one of the class defined in the statute, whether it was valid in law against France, and whether the United States became, by their action in 1800 and 1801, liable over to the individual.

The Government again urges that, as there was war between the United States and France, the seizures were justifiable. This point we have so fully discussed in the opinion delivered at the last term that now it seems necessary only to sum up our conclusions and to consider one or two incidental points pressed with particular energy by the defense at this argument.

There were what were called by some "hostilities," by others "differences," by Congress "the system of predatory violence" (1 Stat. L. 578), by Justice Paterson "a qualified state of hostility," "*war quoad hoc*," and by Justice Chase "limited partial war." The executive department said the conduct of France would have justified a declaration of war, but the United States, "desirous of maintaining peace," contented themselves "with preparations for defense and measures calculated to defend their commerce" (Doc. 102, p. 561), while the United States ministers, speaking of the American statutes, wrote that "they did not even authorize reprisals upon [French] merchantmen, but were restricted simply to the giving of safety to their own till a moment should arrive when their sufferings could be heard and redressed."

Congress did not consider war as existing, for every aggressive statute looked to the possibility of war in the future, making no provision for war in the present, and France, our supposed enemy, absolutely denied the existence of war. So then, the legislative, judicial, and executive branches of our Government recognized no war, no public solemn war, as existing, and the opposing party denied the fact.

It has been urged that the compact of 1800 was a treaty of peace; but we do not agree with this contention, for reasons which we give further on, after first considering the subordinate suggestion made in relation to the caption of that treaty as found in print.

Curiously neither of the originals, that supposed to be in the custody of France nor that supposed to be in the Department of State, is obtainable. That belonging to this Government long since disappeared, and we are informed that a like fate has befallen the French copy. We are therefore forced to turn to the copies in print in various compilations of treaties to see what assistance can be obtained from a careful comparison of them. No material difference appears anywhere but in the caption, and there we should expect to find it, as the caption is not part of the treaty, and is usually drawn to suit the taste of the editor. The caption in the Revised Statutes runs as follows:

Convention of peace, commerce, and navigation with France, concluded at Paris, September 30, 1800; ratification advised by Senate, with amendments, February 3, 1801; ratified by President, February 18, 1801; ratified by First Consul of France, with Senate's amendments, etc.

Martens' French collection of treaties contains the head-note, "Convention entre la République Française et les Etats-Unis d'Amérique, signée le 30 Septembre, 1800," and the editor says he had not a copy from the original treaty, but relied upon another publication. Le Clerc has a brief caption containing the word "peace." The caption in the Bancroft Davis edition of treaties entitles the compact a "Convention between the French Republic and the United States of America," and gives the dates of signature, exchange, and proclamation; while the caption in volume 8 of the Statutes at Large, prepared in 1846, runs simply as follows: "Convention between the French Republic and the United States of America." It should be noticed as to this copy that the letter from the committees of Congress found at the beginning of volume 8 states that they "learn that every law and treaty has been carefully collated with the originals in the Department of State."

In Mr. Adams's message, dated December 15, 1800, transmitting the treaty to Congress, the head-note is exactly as in volume 8 of the Statutes (2 F. R. 295).

No inference, therefore, can be drawn from the caption, and the nature of the treaty must be gleaned from its contents, for if it concludes a war that fact will necessarily appear in some form as it does in the treaties of 1783 and 1814 with Great Britain, and in the treaty of 1848 with Mexico. The object of the treaty is stated to be a termination of the "differences" between the two countries, not of the

"war" nor even of the "hostilities" alleged here to have existed between them. Next it should be observed, and this is a vital distinction, that the treaty is of limited duration; it is to be in force for eight years only. Article V speaks of a "misunderstanding"; and in the twenty-seven articles of the agreement, which cover the many different subjects at that time usually found in a treaty of amity and commerce, there is nothing to indicate that in the opinion of the parties there had been a public solemn war or that they were making a treaty of peace.

We are again cited to *Bas v. Tingy* (4 Dallas), a case which we considered very carefully in our previous opinion and from which we made very full quotation, holding that it decided the state of affairs under discussion to constitute partial war limited by the acts of Congress. The opinions of the Supreme Court speak very clearly as to the relations of the nations, but it is well to bear distinctly in mind that the court was dealing not so much with broad principles of international law as with the interpretation of statutes. Tingy claimed salvage for the rescue of the *Eliza* from a French privateer, and this claim he based upon the seventh section of the *Act of March 2, 1799* (1 Stat. L. 716).

The act is entitled "An act for the government of the Navy of the United States," and the seventh section makes provision for salvage to naval vessels for American vessels retaken from France; in construing this statute the court referred to the act of June 13, 1798, as explanatory of the relations between the United States and France. This latter act being "An act to suspend the commercial intercourse between the United States and France, and the dependencies thereof," does not in any way lead to the inference that public solemn war existed, for if such war existed a formal suspension of commercial relations would be unnecessary, and the contents of the statute negative the inference of war especially in the provision that no French vessels "armed or unarmed, commissioned by or for or under the authority of the French Republic, or owned, fitted, hired, or employed by any person resident within the territory of that Republic, or any of the dependencies thereof, or sailing or coming therefrom, excepting any vessel to which the President of the United States shall grant a passport . . . shall be allowed an entry or to remain within the territory of the United States unless driven there by distress of weather or in want of provisions," and these distressed vessels are to be allowed

to provision and refit (§ 3), something certainly not permitted either in time of war or reprisal.

The *Act of June 28, 1798* (1 Stat. L. 574), also considered by the court, was intended as an addition to that of June 13, 1798 (1 Stat. L. 565), and makes provision as to the amount of salvage to be received by American war vessels capturing French armed vessels during what the latter act describes as the "aggressions, depredations, and hostilities" encouraged and maintained "by the Government of France," and which it does not describe as war.

The decision of the Supreme Court therefore goes to this extent and no more, that for the purpose of a recovery of salvage France was an enemy to the extent the acts of Congress prescribed.

It has been urged that the treaty of 1800 was a solemn adjudication of the claims adverse to this Government, but we are of opinion not only that this position is negated by the treaty itself, but that the negotiations which preceded that contract, and which may very properly be referred to for explanation if there be ambiguity in the document, do not support such a contention. Those negotiations having been commented upon by us heretofore, we need not now repeat them, while as to the expunged second article of the treaty, that upon which this contention hangs, it is sufficient to note the statement that as the ministers were "not able to agree respecting" the treaties of 1778 and 1788, nor upon the indemnities "mutually due and claimed, the parties will negotiate further on these subjects at a convenient time." Meanwhile the treaties are to have no effect and the relations of the countries are to be governed by the treaty of 1800.

The claims made by France, for which the United States offered millions of francs for release, were national, and were based upon the provisions of the treaties of 1778. The claims for indemnity which we had constantly urged, and whose payment Pickering demanded as an ultimatum, were what are known as the "spoliations claims." In the entire negotiation, as we have shown in our former opinions, French claims based upon treaty obligations, past and future, were set up against American claims for illegal seizures, condemnations, and confiscations.

To be sure, Pickering makes a passing mention of national claims on the part of the United States, adding that, as national claims may probably be less definite than those of individuals, and consequently more difficult to adjust, "national claims may on both sides be relin-

quished." (Doc. 102, p. 566.) An examination of the negotiations will show that such claims on our side were not pressed, while on the French side they were strongly urged.

Nowhere is the contention more concisely formulated than in the communication of J. Bonaparte and his colleagues to the American Commissioners, wherein the French ultimata are set forth in this form: "Either the ancient treaties, with the privileges resulting from priority and the stipulation of reciprocal indemnities, or a new treaty assuring equality without indemnity." (Doc. 102, p. 618.)

"At the opening of the negotiations," said the Secretary of State to the American ministers, "you will inform the French ministers that the United States expect from France, as an indispensable condition of the treaty, a stipulation to make to the citizens of the United States full compensation for all losses and damages which they shall have sustained by reason of irregular or illegal captures or condemnations of their vessels and other property under color of authority or commissions from the French Republic or its agents" (Doc. 102, p. 562); and he closed this instruction with several points "to be considered as ultimata," the first of which was: "That an article be inserted for establishing a board, with suitable powers to hear and determine the claims of our citizens for the causes hereinbefore expressed, and binding France to pay or secure payment of the sums which shall be awarded," while the second point prohibited recognition of the old treaties.

There never was a substantial retreat on either side from these absolutely diverse positions, although there was considerable vacillation, until finally, in a spirit of patriotism, the representatives of the United States, abandoning Mr. Pickering's ultimata, consented to leave the question still open, as it is found in the second article of the treaty. That article, in terms, admits that there existed differences as to the treaties of 1778, and in terms it states that indemnities are "mutually due and claimed." If indemnities are mutually "due" and indemnities are mutually "claimed," the instructions and the negotiations prior to the treaty should show what those "due" and "claimed" indemnities are. They do show that upon one side they were claims for national indemnity under treaty obligations; on the other side, claims for indemnity for spoliation. As the treaty states that indemnities are "claimed," and as it states that indemnities are "due," we can not agree that it operates as an adjudication of those claims upon which the indemnities are founded.

The jurisdictional act also negatives this assumption in its direction that we shall examine valid claims arising out of certain acts committed prior to the ratification of the treaty of 1800, thus negating so far as this court is concerned any possible final adjudication by that international agreement. The statute instructs us not to investigate claims now valid against France, or claims which citizens now have against France, but valid claims which citizens "had" against France and which arose out of certain illegal acts committed prior to the treaty's ratification.

By the action of the President and Senate on the one side, and of Napoleon on the other, the second article was expunged from the treaty upon agreement that "the two states renounce the respective pretensions which were its object." Thus, for the purpose of quieting the difficulties and dangers flowing from the treaties of 1778, to avoid the French claims, from which a release had been asked at an offered price of many million francs, to save the young Republic from internal dissension and from danger from without, the American authorities surrendered to France the claims for spoliations upon which up to that moment they had most steadily and most strenuously insisted.

The alleged reprisals committed by this country upon French commerce were most limited in their nature, and hardly amounted to more than is allowed by the natural law of self-defense—that law which, by not obliging us to part with our lives, our limbs, or our property, allows us to defend our persons and our goods.

The reprisals were authorized and defined by acts of Congress, the first of which was passed in June, 1798, and the last in January, 1799.

The *Act of June 25, 1798* (1 Stat. L. 572), authorized "the defense" of merchant vessels against "French depredations," and to that end permitted the merchantman to oppose search, restraint, or seizure attempted by an armed French vessel, permitted the merchantman to repel by force any assault by such a French vessel, authorized him to capture such an assaulting vessel, and permitted the merchantman to retake any other American merchantman captured by any armed French vessel.

The second section of this act, which provided for salvage, refers to the case of the capture of a French "armed" vessel, from which an assault or other hostility "shall be first made"; and Section 3 requires a bond from armed merchantmen that they shall commit no "unprovoked violence" against the vessel of any nation in amity with the

United States. Finally, the sixth section directs that when France shall stop the "lawless depredations and outrages hitherto encouraged and authorized by that Government against the merchant vessels of the United States, and shall cause the laws of nations to be observed," the President shall instruct the merchantmen to submit to search and to refrain from violence.

As to the next act, passed three days later (1 Stat. L. 574), it is only necessary to note that recaptures were to be restored after salvage paid the recaptors, nothing going to the Treasury. The 9th of July following an act was passed to "protect the commerce of the United States," which authorized the President to give private armed vessels the same license and authority to take armed vessels of France, and to recapture American vessels, as public armed vessels of the United States had by law (1 Stat. L. 578, § 2); "armed" French vessels captured to be absolutely forfeited to the capturing vessel, which should receive also just and reasonable salvage on all recaptures. (§§ 5, 6.)

The license and authority given the public armed vessels of the United States are found in the first section of this act of 9th July, 1798, and also in a prior act entitled "An act more effectually to protect the commerce and coasts of the United States," approved May 28, 1798 (1 Stat. L. 561), which permitted the seizure only of such French armed vessels as had committed, or were hovering on our coasts for the purpose of committing, depredations on vessels belonging to citizens of the United States, and also permitted the recapture of American vessels seized by the French. The act of July went further than this, and authorized the President to instruct the commanders of public armed vessels to "subdue, seize, and take any armed French vessel which shall be found within the jurisdiction of the United States, or elsewhere on the high seas." The authority, therefore, given to armed merchantmen by this statute was to subdue, seize, and take any French "armed" vessel, and to recapture any American vessel.

These statutes seem to us not only defensive in their character, but also marked by self-restraint and calm judgment. Notwithstanding the persistent attacks by France upon the American mercantile marine, no permission is given in this legislation to injure French commerce; armed vessels only are to be seized, and American vessels may be recaptured; peaceable French merchantmen may pursue their voyages unmolested.

A system of reprisals goes further than this, for it is based upon the

principle of compensation, and is aggressive, not defensive, in spirit and intent.

Reprisals [says Vattel, lib. 2, p. 342] are used between nation and nation to do justice to themselves when they can not otherwise obtain it. If a nation has taken possession of what belongs to another; if it refuses to pay a debt, to repair an injury, to make a just satisfaction, the other may seize what belongs to it and apply it to its own advantage, till it has obtained what is due for interest and damage, or keep it as a pledge until full satisfaction has been made. In the last case it is rather a stoppage or a seizure than reprisals, but they are frequently confounded in common language.

Dr. Woolsey says reprisals consist in recovering what is our own by force, then in seizing an equivalent. We do not attempt to lay down any general rule of law on this question of reprisals, but a study of the authorities leads to the conclusion that the action is affirmative and aggressive in character, having for its object compensation. The essence of reprisals has been said to be security—that is, the seizure of property for protection until just claims are settled, but we do not see that the principle of compensation is thereby changed, as the seizure of property for security must be directed by an effort to obtain security sufficient in amount to provide compensation should the demand for redress be unsuccessful.

The statutes we have cited have no such object; they are not aggressive in their provisions or in the power they give, but entirely defensive, except in the instance of seizing armed vessels or retaking captured American vessels. The aim of the statute is defense of our merchantmen, not depredations upon the commerce of France, not compensation to the United States for losses already incurred, not security for demands heretofore made, but protection and safety in the future. It seems to us, therefore, that these acts lack the essential elements of statutes of reprisals. Two suggestions occur to us in concluding this point. If there were a state of war or a state of reprisals existing, why should distressed French vessels be allowed to refit and provision in our ports as they were by the express provisions of the *Act of January 30, 1799* (1 Stat. L. 614)? The Government of the United States could not have considered that it was at war, or that a state of reprisals existed, for the instructions of Mr. Pickering, the Secretary of State, and the mouthpiece of the Government, entirely negative such a supposition. (Doc. 102, pp. 561 *et seq.*)

In the face of these statutes the seizure of a merchant vessel can not be justified on the one ground that she was armed; and more especially is this true as to seizures during the period when these claims arose, a period when, to guard against the pirates of the Caribbean, of the Malay Archipelago, or of the Algerine coast, it was customary for merchant vessels to carry some armament.

The laws of neutrality and nations, in no instance that I know of [says Judge Bee, in 1795, while holding the District Court of South Carolina], interdict neutral vessels from going to sea armed and fitted for defensive war. All American Indiamen are armed, and it is necessary they should be so. . . . When the wisdom of Congress substituted an embargo for a declaration of hostilities, preparations of this sort might have been seen in every State in the Union. From the instructions and circular letter to the different collectors, it was clear that the vessels of the belligerent powers alone were comprehended in the restrictions. Even they might arm for defense; and if, as respected French vessels, it should appear doubtful whether their equipment was applicable to war or commerce, such equipment was declared lawful.

Each case before the court must of course be examined separately upon the facts peculiar to it, and it is not impossible that such facts may be shown as to some of the private armed vessels of the United States as justified their seizure and condemnation.

The vessels whose cases are now decided were either unarmed or were armed for strictly defensive purposes.

The jurisdictional act requires us to inquire into illegal condemnations, and it is urged on behalf of the defendants that all condemnations by the French courts are final and conclusive upon this court if the French court had jurisdiction. Many citations are made in support of this contention, among them the case of *Baring and others v. The Royal Exchange Assurance Company* (5 East. 99 *et seq.*), which may be taken as a fair illustration.

The American ship *Rosanna*, insured by the defendants, was captured and condemned by the French, whereupon plaintiffs sued on the policy and recovered. Lord Ellenborough, Ch. J., interrupting the argument, said:

Does not this [French] sentence of condemnation proceed specifically on the ground of infraction of treaty between America

and France in the ship not having those documents with which in the judgment of the French court the American was bound by treaty to be provided? I do not say that they have construed the treaty rightly; on the contrary, suppose them to have construed it ever so iniquitously; yet, having competent jurisdiction to construe the treaty, and having professed to do so, we [the court] are bound by that comity of nations which has always prevailed amongst civilized states to give credit to their adjudication where the same question arises here upon which the foreign court has decided. After arguing for hours, we must come to the same conclusion at last, that the French court has specifically condemned the vessel for an infraction of treaty which negatives the warranty of neutrality. Then, having distinctly adjudged the vessel to be good prize upon a ground within their jurisdiction, unless we deny their jurisdiction, we are bound to abide by that judgment. Whenever a case occurs of a condemnation by a foreign court on the ground of *ex parte* ordinances only, without drawing inferences from them to show an infraction of treaty between the nation of the captors and captured, and referring the judgment of the court to the breach of treaty, I shall be glad to hear the case argued, whether such ordinances are to be considered as furnishing rules of presumption only against the neutrality or as positive laws in themselves, binding other nations *proprio vigore*.

The decision of the English court, then, goes to this extent, that in an action between individuals the decree of the French court which had jurisdiction is final; so would it also be final as to the vessel, and the purchaser at the confiscation sale could rest upon the decree as good title against all the world.

But all this does not affect the position of the United States Government against the Government of France.

Lord Ellenborough says that no matter how iniquitous the construction given the treaty by the French court, he, as a judge, is bound to follow it. But so is not the Government of the United States. That Government could have objected either that the court was corrupt, or that there existed no treaty, or that there had been manifest error in construing it. All such questions may be outside the right of a court to consider, but they are within the right and form part of the duty of the political branch of the Government. If the French court, acting within its jurisdiction, construed the treaty iniquitously, the courts might not have power to remedy the wrong, but the owner had a right to appeal to his Government for redress, and that Government, when convinced of the justice of his complaint, was bound to endeavor to redress it.

The decree is an estoppel on the courts, but it is no estoppel on the Government; in fact, the right to diplomatic interference arises only after the decree is rendered. Of course, precedents for cases of this kind are not to be found in the reports of courts, for no such case can, in the nature of things, come before a court unless by virtue of a special and peculiar statute, such as that under which we now act; but diplomatic history is full of them.

Rutherforth (*Institutes*, vol. 2, ch. 9, p. 19), speaking of the right of a state to proceed in prize, says:

This right of a state to which the captors belong to judge exclusively is not a complete jurisdiction. The captors, who are its own members, are bound to submit to its sentence, though this sentence should happen to be erroneous, because it has a complete jurisdiction over their persons. But the other parties in the controversy, as they are members of another state, are only bound to submit to its sentence as far as this sentence is agreeable to the law of nations, or to particular treaties, because it has no jurisdiction over them in respect either of their persons or of the things that are the subject of the controversy. If justice, therefore, is not done them, they may apply to their own state for a remedy, which may consistently with the law of nations give them a remedy either by solemn war or by reprisals. (See Dana's *Wheaton*, 391.)

This brings us naturally to another point, admitted as a general principle, that appeal should be prosecuted to the court of last resort before there can be diplomatic intervention.

The exceedingly able British-American Commission which sat in Washington in 1872 not only unanimously decided that they had jurisdiction in prize cases in which the decision of the ultimate appellate tribunal of the United States had been had, a conclusion in which even the agents of the United States concurred, but also that they had jurisdiction when the claimant had not pursued his remedy to the court of last resort, provided satisfactory reasons were given for the failure to appeal. (Papers relating to the Treaty of Washington, vol. 6, pp. 88-90.) To this last conclusion the American Commissioner dissented; but even he held that a misfeasance or default of the capturing Government, by which means an appeal was prevented, was sufficient to excuse the failure to appeal. (*Id.* 92.)

The rights of the prize courts are the rights of the capturing state. These courts are its agents, deputed by it to examine into the conduct

of its own subjects before becoming answerable for what they have done, and the right ends when their conduct has been thoroughly examined. Therefore the state has a right to require that the captor's acts be examined in all the ways which it has appointed for this purpose, and on this principle is founded the doctrine that the complainant, unless he exhaust his appeal, shall be held to confess the justice of the decision. This presupposes, first, that there are appellate courts: second, that they are open to the complainant freely and honestly. The captor has no right to insist for his own protection upon the fulfillment of a form which he by his own acts prevents.

There is also a distinction, not often clearly drawn, between the validity of a claim *per se* and the right to enforcement. The justice of the claim is founded upon the injustice of the sentence. The appeal does not affect the merits of the claim; it does not palliate or destroy any wrong done; but it is simply a course provided for the captor's protection, that he may fully examine into the acts of his own agents, through his other agents, the courts.

The whole proceeding, from the capture to the condemnation, is a compulsory proceeding *in invitum* by the state in its political capacity, in the exercise of war powers, for which it is responsible, as a body politic, to the state of which the owner of the property is a citizen. (Dana's Wheaton, note, 186.)

Therefore the capturing state may waive such a demand, and not insist upon exhausting its right to further investigation, and may waive it by failing to provide an appellate tribunal, or by preventing recourse to it, or in any other way which shows an intention not to insist upon this right of examination; but appeal or no appeal, the validity of the claim is founded upon the injustice to the claimants.

All writers lay down the principle that appeal should be taken from the inferior to the superior tribunal before resort by the injured Government to measures of redress; but this principle is always coupled with the extreme measures of war and reprisals (see Rutherford, *supra*; Grotius, bk. 3, ch. 2, §§ 4, 5), and there is no assertion in the writers that illegal capture necessarily does not found an international claim even when appeal has not been taken.

It was notorious that justice could not be obtained in the French prize tribunals in existence at the time of those seizures. Mr. Pickering, writing to Mr. Pinckney in April, 1797, said:

The report of Mr. Mountflore, which you transmitted, shows that the merchants in the ports of France who constitute the tribunal of commerce in which our captured vessels are tried and, on the most frivolous and shameful pretenses, condemned, are often; if not commonly, owners of the privateers on whose prizes they decide. (Doc. 102, p. 165.)

Consuls were at one time forbidden to appear before the tribunals in defense of absent owners. (*Prises Maritimes*, vol. 2, pp. 317 *et seq.*)

Soon [says Cauchy], upon the occasion of the rupture with England, the signal was given for privateering. The French gave to it all that could encourage speculations half mercantile, half warlike; they put at the disposition of the owners part of the sailors of the fleet, even to strangers and neutrals; they opened to them the storehouses of the state; they abandoned to the captors the total product of the captures, and they joined to that in certain cases premiums and rewards. They did more; they abolished with the offices of the admiralty the tribunal of prizes, and, in order to find judges more ready to sanction captures, they conferred upon the tribunals of commerce and of the district the judgment of these matters.

It was erroneously that they had represented the benefits of privateering as a source of riches and public prosperity. In order to make the fortunes of four or five ports, the privateers were reducing the whole of France, a country by nature agricultural and industrial, so that she had neither raw materials for manufactures nor supplies for her navy, nor outlets for her products, for they kept away from our ports the neutral vessels which could alone supply the total absence of vessels sailing under the French flag.

On the other hand, were not the relations of the Republic with foreign Governments at the mercy of simple judges of commerce or of district, imprudently invested by the law with the terrible right to put France in a state of war against the wish and knowledge of her Government? The Directory concluded that privateering, instead of receiving more extension and favor, ought to be restrained and regulated by law.

But this progress, foreseen under the Directory, was not to be accomplished until after its fall. (*Le Droit Maritime International*, Eugene Cauchy, Paris, 1862, vol. 2, pp. 317, 318, 323-325.)

The council of prizes, which was the supreme court of appeal in prize matters, was abolished in 1793. The 29th Germinal, year IV, the Council of Five Hundred passed a resolution thus expressed: "The appeals from the tribunals of commerce in matters of prize shall be carried to the tribunals of the departments."

. . . Carried to the Council of the Ancients, this resolution was not opposed, and the 8th Floréal, year IV, it was converted into law. One only remembers too well (adds M. Merlin) how disastrous were the results of this strange legislation. The tribunals paid no attention in their decrees to the relation of France with foreign powers, whence arose numerous and pressing claims.

However, to palliate the political inconvenience that might flow from thus vesting ordinary tribunals with the cognizance of maritime prizes, it was thought sufficient to authorize the commissaries near the civil tribunals to refer to the Government those matters which necessitated the interpretation of treaties, and in which the judgments of the tribunals might compromise the rights of a friendly or neutral power; but experience was not long in demonstrating that this palliation was a vain remedy, and that the legislation ought to be deeply modified, the tribunals having shown the greatest hostility against the measure, some determining in spite of it the causes which the commissaries had referred to the Executive Directory; others denying to the commissaries of the Government the right to judge alone of the propriety or necessity of the reference. Matters had come to such a point that in the year VIII the minister of justice, Cambacérès, being instructed by the Consuls as to the amendments to be made to the legislation as to prizes, was authorized to say "that privateering had become a system of brigandage, because the laws which had been applied to it were insufficient and bad; that they had heard complaints raised in all directions by merchants and foreign ministers, and that nevertheless the Government, convinced of the justice of these complaints, had always been without power to do right." (*Traité des Prises maritimes*, par Pistoye et Duverdy, Paris, 1858, vol. 2, pp. 157, 158.)

The form and expense of appeal were useless, for it was not denied that the adjudications below were in accordance with French ordinances, while it was contended that they were in violation of the rights of neutrals, measured either by treaty provision or by the precepts of the law of nations. Municipal law is not a measure of international responsibility, but it is binding within the jurisdiction of the state upon all its subordinate agents, including the courts. The decree in one of the cases before us, which was appealed to the civil tribunal, shows the following as the grounds for affirming the condemnation below:

The tribunal . . . considering the rules of 1704, 1744, 1778, prior as well as subsequent to the treaty between France and the United States of America, emphatically demand that all

foreign ships shall be furnished with a *rôle*, authenticated by the public officers of the neutral port whence they have set out, under pain of being good prize. Considering that the execution of these regulations has been ordered by article 5 of the law of the 14th of February, 1793; considering that a ship, which can not be reputed neutral on account of a lack of papers sufficient to prove its neutrality, can not be regarded but as an enemy, and, being so, its cargo is to be confiscated, according to the terms of article 7 of the ordinance of the marine of 1681—title prize—says that it has been well judged by the judgment which has been appealed from, and orders that it shall have its full and entire effect.

So it appears that questions of treaty or international law were not ruled upon, the court being guided alone by the statutes of France. In the face of precedents of this kind an appeal was a vain and expensive form, as an affirmation of the judgment below necessarily must follow. The cases were class cases, the condemnations (so far as we have yet seen) proceeded upon substantially the same grounds, and one appeal was decisive of all similar cases. The state's right of investigation had therefore, in effect, been satisfied when it had affirmed in one case the legal principles applicable to many others presenting the same facts.

There were appeals also to the court of cassation, which were decided adversely to the claimant—necessarily so, decided when the character and duty of the court are understood.

When the jurisdiction of the court of cassation is invoked there must take place a preliminary argument to determine whether the court under the particular facts of the case has or has not jurisdiction. This settled in the affirmative by one of the divisions of the court known as the chamber of requests, the cause is referred either to the chamber of civil causes, or to the chamber of criminal causes, and the jurisdiction of these chambers is simply to secure uniformity in the construction of the statutes. Merlin says:

As resource to the cassation is only an extreme remedy which has no other object than the maintenance of the legislative authority and of the ordinances, it can not be made use of under the simple pretext that a case has been ill-judged in the main.

The opinion of the council of state, dated January 18, 1806, speaking of the court of cassation, says:

If the forms have been violated [below] there is no judgment, properly speaking, and the court of cassation destroys an irregular decree. If, on the contrary, all the forms have been observed, the judgment is reputed to be truth itself. . . . If, then, a decree should be in formal opposition to a written provision of the law, the presumption of its justice disappears, for the law is and ought to be the justice of the tribunals; wherefore the court of cassation has the right to annul in this case the decrees of the courts. (See Merlin, *Répertoire*. . . . *de Jurisprudence*.)

What, then, could be the object of an appeal to the court of cassation when the court below had not misinterpreted the French law, especially as such an appeal would in no event have suspended the execution of the judgment? (Code, art. 16, title, Courts and tribunals (1790), Tripier's edition, 1865.)

The condition of affairs in regard to French courts is well illustrated by the letter from Pinckney, Marshall, and Gerry to the Secretary of State (October 22, 1797, Doc. 102, p. 467), wherein they quote their advocate as saying: "It is obvious that the tribunal have received instructions from the officers of the Government to hasten their decisions, and that it was hardly worth while to plead, for all our petitions in cassation would be rejected."

In the colonies matters were still worse than in France (Tuck's Report, and citations therein, H. R. Ex. Doc. 194, 49th Cong., 1st sess.) and appeals were much more difficult. After the decision of a court, organized in some instances for the purpose of condemnation, by an officer of the Government, himself interested in privateers, or in some instances after a decision by that officer in person (*id.*, p. 9), the only remedy was to obtain an appeal to the mother country. This trouble and expense were practically useless (see in this relation Skipwith to Berlier, Doc. 102, pp. 833, 834). Communication between France and the colonies was difficult; the masters of the seized vessels were poor and were often stripped by the privateers of what little they had.

The condition of French prize tribunals was so notorious as to cause a change in admiralty law, the reasons for which were thus expressed by Lord Stowell:

It has certainly been the practice of this court, lately, to grant salvage on recapture of neutral property out of the hands of the French, and I see no reason at the present moment to depart from it. I know perfectly well that it is not the modern practice of the

law of nations to grant salvage on recapture of neutral vessels, and upon this plain principle, that the liberation of a clear neutral from the hand of the enemy is no essential service rendered to him, inasmuch as that same enemy would be compelled by the tribunals of his own country, after he had carried the neutral into port, to release him, with costs and damages for the injurious seizure and detention. This proceeds upon the supposition that those tribunals would duly respect the obligations of the law of nations; a presumption which, in the wars of civilized nations, each belligerent is bound to entertain in their respective dealings with neutrals. But it being notorious to all Europe, in the present war, that there has been a constant struggle maintained between the governing powers of France, for the time being, and its maritime tribunals, which should most outrage the rights of neutral property—the one by its decrees, or the other by its decisions—the liberation of neutral property out of their possession has been deemed, not only in the judgment of our courts, but in that of neutrals themselves, a most substantial benefit conferred upon them, in a delivery from danger against which no clearness and innocence of conduct could afford any protection. And a salvage for such service has not only been decreed, but thankfully paid, ever since these wild hostilities have been declared and practiced by France, against all acknowledged principles of the law of nations and of natural justice. When these lawless and irregular practices are shown to have ceased, the rule of paying salvage for the liberation of neutral property must cease likewise.

No proof is offered that the maritime tribunals of France have, in any degree, corrected either the spirit or the form of their proceedings respecting neutral property generally; and, therefore, I shall not think myself authorized to depart from the practice that has been pursued, of awarding a salvage to the captors. (*The Onskan*, 2 Robinson, 300, 301.)

And later he said:

It is certainly true that the standing doctrine of the court has been that neutral property, taken out of the possession of the enemy, is not liable to salvage. It is the doctrine to which the court has invariably adhered till it was forced out of its course by the notorious irregularities of the French cruisers and of the French Government, which proceeded, without any pretense of sanction from the law of nations, to condemn neutral property. On these grounds it was deemed not unreasonable by neutrals themselves that salvage should be paid for a deliverance from French capture. The rule obtained early in the war, and has continued to the present time. It is said that a great alteration

has taken place in the French proceedings, and that we are now to acknowledge a sort of return of "*Saturnia Regna*." This court is not informed, in a satisfactory manner, that any such beneficial change has taken place in the administration of prize law in the tribunals of France; and, therefore, it will continue to make the same decree till the instructions of the superior court shall establish a different rule. (*Eleonora Catharina*, 4 Rob. 157.)

It is important to note that during the period of these seizures neither the Government of the United States, which consistently supported the claimants' contentions, nor the Government of France, from whom we were demanding redress, indicated the necessity of the form of appeal, nor later did the French, even in the long negotiations in which the validity of these claims was a principal subject of discussion, intimate in any way that they considered the appeal of importance or that they required it.

We conclude, therefore, that under these exceptional circumstances a claim properly founded in law is not excluded from our jurisdiction because the supposed remedy by appeal was not exhausted, and this we hold upon two principal grounds: First, that by the action of the French Government such an appeal was useless or impracticable; second, that as between the United States and France such an appeal as a condition precedent to recovery was in effect waived.

The decree condemning the *Industry* proceeds upon the theory that the vessel's *rôle d'équipage* was not in the form said to be required by article 25 of the treaty of February 6, 1778, and also said to be required by certain French decrees declaring to be good and lawful prize every American vessel not having a *rôle* in a form prescribed.

Colloquially a *rôle d'équipage* is usually treated as a crew list, whereas in French law it is a more formal paper, with more extended requirements.

To the first of the propositions contained in the court's decree a very clear answer is found in the fact that the treaty does not demand, as we have already decided, that a crew list of any kind be carried on the vessel. Article 25 of that instrument calls for a "letter or passport expressing the name, property, and bulk of the ship, as also the name and place of habitation of the master or commander of the said ship, that it may appear thereby that the ship really and truly belongs to the subjects of one of the parties;" this passport to follow a form annexed to the treaty. The ship was also to have a certificate

as to cargo, showing she was not carrying contraband; but this certificate is not brought in question in these cases. The treaty therefore required two documents: First, a passport; second, a certificate as to cargo. The form of passport annexed to the treaty runs as follows:

The name of the master and the name, hailing port, and tonnage of the vessel are given, together with the name of the port in which she is lying, as well as that of the port to which she is bound; the general nature of her cargo is described, and it is made known and certified that permission has been given the master to proceed after he shall make oath that the vessel belongs to one or more American citizens.

Up to this point, therefore, the passport's requirement is a description of the vessel and cargo, with the name of the master and a sworn statement as to the citizenship of the owners. Up to this point also the document follows exactly article 25 of the treaty, contains everything demanded by that article, and we are informed that it was the custom of the United States in the English version of the passport to halt at this point, while the versions in foreign languages contained the concluding portion, which we are now about to consider. (See original sea-letter of the *Zebra*; claim allowed under treaty of 1831; original MSS. Department of State.)

The master "will," it says further, keep the marine ordinances on board, in every port he "shall" show his sea-letter, "shall" give a faithful account of his voyage, and "shall" carry the colors of his country; and he shall (or will) enter in the proper office (*remettra*) what:—"a list, signed and witnessed, containing the names and surnames, the places of birth and abode of the crew of his ship and of all who shall embark on board her, whom he shall not take on board without the knowledge and permission of the officers of the marine."

There is no requirement here that the master shall carry on his vessel the document described, be it *rôle d'équipage* or crew list. The demand of this clause is that such a document be deposited or filed (*remis*) in a proper place, and whether this be done before or after the passport issue is not material. That instrument simply declares that such a list has been, or at least will be, before sailing properly filed, not carried. (Doc. 102, pp. 467 and 564; 2 *Prises Maritimes*, 53.)

The provision of Article IX of the treaty of 1788, relating as it

does to consular rights in the arrest of deserting seamen, has no bearing upon this question. A semi-extraterritorial power is by that instrument given to French consular officers, and a way strictly marked out in which they shall pursue it; to arrest a deserter they must show him to be part of the vessel's crew, and this they must do by exhibiting "the registers of the vessel or ship's roll." This is a specific agreement relating to a specific subject, and has no reference to condemnations.

The *Industry* was not condemned because the crew list had not been filed in the home port, but because the *rôle d'équipage* was not in form. The careful study and patient research of Government counsel have failed to develop any treaty requirement that such a document be carried on board the vessel, while the United States Government constantly and most peremptorily insisted that during all the period now under discussion the French demand was illegal and unauthorized by treaty or other law. The Pinckney mission told M. Belamy in October, 1787 (Doc. 102, pp. 466, 467), that none of our vessels had such a *rôle*; and that if they were to surrender the property taken from their fellow-citizens in cases where the vessel was not furnished with such a *rôle* the United States would become responsible for the property so surrendered, as "it would be impossible to undertake to assert that there was any plausibility in the allegation that our treaty required a *rôle d'équipage*."

Pickering's interesting instructions to the Ellsworth mission, dated October 22, 1799 (Doc. 102, p. 561), contain a very definite statement of the position of the Government on this subject. He lays down as—

an indispensable condition of the [proposed] treaty a stipulation to make to the citizens of the United States full compensation for all losses and damages which they shall have sustained by reason of irregular or illegal captures or condemnations of their vessels and other property. And all captures and condemnations are deemed irregular or illegal when contrary to the law of nations generally received and acknowledged in Europe, and to the stipulations in the treaty of amity and commerce of the 6th of February, 1778, fairly and ingenuously interpreted while that treaty remained in force, especially when made and pronounced:

(1) Because the vessel's lading, or any part thereof, consisted of provisions or merchandise coming from England or her possessions.

(2) Because the vessels were not provided with the *rôles*

d'équipage prescribed by the laws of France, and which it has been pretended were also required by treaty.

(3) Because sea-letters or other papers were wanting, or said to be wanting, when the property shall have been, or shall be, admitted or proved to be American. Such defect of papers, though it might justify the captors and exempt them from damages for bringing in such vessels for examination, could not with reason be a ground of condemnation.

Further on in the instruction Mr. Pickering says:

There never was, indeed, any intimation on the part of France from 1778, when the treaty of amity and commerce was made, until the passing of the decree of the Directory, in March, 1797, that a *rôle d'équipage*, other than the ship's roll or the shipping papers [see act 1790], would be required. It was then suddenly demanded, and the decree . . . was instantly enforced and became a snare to the multitudes of American vessels, which, for want of previous notice, would not have on board the document in question, if their Government should permit them to receive a document which they were under no obligation to produce. For it can not with any semblance of justice be pretended that the vessels of one nation are bound to furnish themselves with papers in forms prescribed by the laws of another. And if we resort to the treaty of 1778, or to the sea-letter or passport annexed to it, on which letter the Directory pretended to found their decree concerning the *rôle d'équipage*, we shall see that these words are not to be found in either. (*Id.* 564.)

For the purpose of argument, however, we may for the moment admit the French contention in this matter—a contention now adopted by the defense—and concede that, by relation back through the passport to the twenty-fifth article of the treaty of 1878, it became the duty of the vessel's master not to file a crew list at the port of departure, but to carry on his vessel a *rôle d'équipage* drawn and certified in accordance with the ordinances and decrees of France, and not necessarily in accordance with the statutes of the United States, to which country his vessel belonged and of which country he was a citizen.

The position being admitted, we must consider the amount of penalty which the vessel is to suffer if such a *rôle* be lacking. What penalty does the treaty impose? That instrument says nothing about a *rôle* or crew list, but demands a passport, which latter document it is urged requires the presence of a *rôle* on the vessel; the treaty pen-

alty, therefore, for the lack of this *rôle*, not mentioned in the body of the instrument, can not be greater than the penalty for the lack of the passport which is there mentioned. The object of the passport provision is clearly to be gathered from the wording of the treaty: "To the end that all manner of dissensions and quarrels may be avoided and prevented," the twenty-fifth article, it is provided that when either party is at war the vessels of the other shall be furnished with passports describing the name, property, and bulk of the ship, together with the name and abode of the master, so that it may appear that the vessel "really and truly belongs to the subjects of one of the parties." Such is the substance of the twenty-fifth article, whose object as clearly expressed is not to affix penalties, but to avoid "dissensions and quarrels."

The twenty-seventh article provides, that if a merchant ship of either party meet a man-of-war or privateer of the other, the armed ship, "for the avoiding of any disorder," shall remain out of cannon-shot, send boats to the merchantman; put no more than two or three men on board, to whom the master shall show his passport; having done which he may pursue his voyage, and the vessel may not be molested or searched in any manner, nor chased, nor forced out of her course. The passport, then, being given for the purpose of preventing "dissensions and quarrels," is by virtue of its presence alone to free the ship from search, chase, or forced deviation. No penalty is affixed for the lack of this passport other than what may be inferred, as, for example, that without it she would be liable to detention and search, and possibly to investigation by a prize court or other competent tribunal as to the honesty of her character and the innocence of her voyage.

No treaty penalty being affixed for the absence of a definitely prescribed document, how can one be held to exist for the absence of a subsidiary document which the treaty does not require the master to exhibit, even if its presence on board be necessary? An American vessel boarded by a French officer need only, so says article 27, do one thing, need only show one paper, to wit, his passport; this done, he may immediately proceed.

No rule of international law has been called to our attention, and none is known to us, which, in the absence of specific agreement to the contrary, requires the presence on vessels of any particular document. Some papers undoubtedly should be carried for protection; that is,

carried for the benefit of the ship, to divert suspicion, to avoid detention and delay, and to afford at least *prima facie* proof that she is what she pretends to be, an innocent vessel engaged in legitimate business. The nature and character of ships' papers is, however, usually a matter of municipal regulation to which foreign vessels must conform or incur certain reasonable penalties, enforceable within the territorial jurisdiction of the enacting Government. Many examples of municipal acts of this nature may be found in our own statute books.

Speaking, generally, however, aside from local regulations not enforceable by the Government of one nation over the vessels of another on the high seas, the class and kind of papers to be carried by a merchantman are prescribed by his own Government, and as between him and a foreign vessel of war these papers are *prima facie* proof of innocence and honesty; but as they are not conclusive on these points, so is their absence no more than the foundation of a reasonable suspicion deserving inquiry into the true character of the vessel and voyage. (See, also, Merlin, 2 *Prises Maritimes*, 51.)

It is of the highest importance [says Ortolan] that a vessel be in position to prove her nationality. The flag is the distinctive evident sign of the vessel's national character. Every state has its particular colors under which its citizens sail. . . . But this distinctive sign can not be the only one, for if it were it would be easy to disguise the nationality of a vessel. Therefore, to provide clear proof of this nationality, ships' papers or sea-letters are required, with which every merchantman should be provided. The number, nature, and form of these papers are regulated by the law of each country, usually through the provisions of codes of maritime commerce. (*Règles internationales et Diplomatie de la Mer*. Ortolan, vol. 1, p. 174.)

The right to visit [says Hautefeuille] must be confined to an ascertainment through examination of official papers of the nationality of the vessel met, and also in case she is bound to an enemy's port, whether faithful to her duty she carries no arms or munitions of war; that is, that she is not guilty of interference in the hostilities. These two single points ascertained, and that only by documents coming from the neutral sovereign, or his delegates, the cruiser should retire and allow the vessel, now recognized as neutral, to continue her voyage. (Hautefeuille, vol. 3, p. 428; Parsons, *Shipping*, vol. 2, pp. 475-477.)

The lack of a particular ship's paper may be punishable under certain circumstances within local jurisdiction as a police measure, but

never, so far as we know, by absolute confiscation when it is shown that the vessel is innocently pursuing a legitimate voyage. An accident is easily supposable by which, after leaving port, and while on the high seas, all the papers of a ship may by fire or water be destroyed. On that account is she to be confiscated? We know of no rule of law, municipal or international, which would authorize such a course.

The *Industry*, it is said, did not have a proper *rôle d'équipage*. The treaty did not require any, or, if it did, then it punished the lack of the *rôle* by detention, search, and inconvenience only. The crew list is a paper usually carried on a merchant vessel, but its absence is not, by international law, punishable by confiscation.

After all the discussion between the two Governments in regard to the *rôle d'équipage*, we find in article 4 of the treaty of 1800 provision for a passport identical in form with that of 1778, which could only have been so therein inserted because both Governments had agreed upon what had always been contended for by the United States, and finally admitted by France, that this form imposed upon the shipmaster no obligation to carry on board his vessel the document technically known to the French law as a *rôle d'équipage*.

That France came openly to this position is shown by various cases.

In the case of the *Louise* (13 Thermidor, year IX) the council of prizes decided that the laws of France relative to *rôles d'équipage* should not be applied to foreign ships, it being sufficient that their *rôles* conformed to the laws of their own country. (*Traité des Prises maritimes*, Pistoye et Duverdy, vol. 1, p. 484.)

In the cases of the *Elizabeth* (17 Pluviose, year VII) and of *Les Deux Amis* (3 Messidor, year VIII) it was held that even a failure to produce a proper passport or sea-letter did not warrant condemnation if the neutrality of the vessel sufficiently appeared from other papers or indicia on board. (*Id.*, pp. 439, 479.)

The commissioner of the French Government very thoroughly presented this whole question in the case of the *Pegou*, on trial before the council of prizes. (*Traité des Prises maritimes*, Pistoye et Duverdy, vol. 2, pp. 51 *et seq.*)

Among other things, he said that certainly the regulations of 1744 and 1778 and the orders of the Directory required a *rôle d'équipage*, certified by public officers at the port of departure. Certainly, also, the *rôle d'équipage* is not set forth in the treaty of 1778 as among

the documents required to show neutrality. Whether the treaty or the French decrees should prevail he does not decide, but starting with the principle that all questions of neutrality are questions of good faith, in which actual facts, not simply appearances, must be examined, he holds that the absence of a required document or an irregularity in form does not authorize condemnation as prize. The truth must be sought, and that not by technical forms; simply omissions or irregularities should never obscure the truth if it be otherwise proved. The essential question is, whether the ship is or is not in fact neutral. It is not of importance that legislators have thought it their duty to require the presentation of particular papers; the severity of the legislators is always subordinate to the surrounding circumstances which alone lead to conviction. The neutrality should be proved, but this may be done notwithstanding the omission or irregularity of certain forms. On the other hand, fraud may be uncovered, though sought to be concealed under deceiving appearance. All thorns and all subtleties of law must be thrown aside "*il faut procéder par bonne et mûre délibération et y regarder par la conscience.*" And the court followed his advice thus officially given.

We are irresistibly forced to the conclusion that a condemnation based simply on the absence of a *rôle d'équipage* or upon its informality was illegal.

We do not, however, hold that the absence or informality of a ship's paper may not create a suspicion calling for explanation, or that its absence or informality may not, in connection with other evidence, give good ground for investigation and suitable punishment. The cases now before us do not present this issue. In the case of the *Industry*, Benjamin Hawkes, master, for example, there is no allegation in the decree of the tribunal, nor is there anything in the proceedings tending to show that she was not what she pretended to be, an American vessel owned by citizens of the United States, honestly pursuing a legitimate and peaceful voyage. The grounds of condemnation were solely that the *rôle d'équipage* which the vessel had on board was not in form, being signed only by one notary public "without the confirmation of witnesses," and there being written on the back of said *rôle* an unsigned certificate that a *rôle d'équipage* was not necessary.

It will probably become important to consider in the future the proposition of the defense that the captured vessel is required to prove

her innocence—that is, that the *onus probandi* rests upon her in prize proceedings. In this case, however, there is no allegation that the vessel was violating neutrality or violating any law of nations or any law of France, other than that which demanded a *rôle d'équipage* in a prescribed form. Consideration of this question is therefore reserved.

Some of the points presented in the argument we do not consider more in detail, as they have either been discussed by us before, or, in our judgment, are decided in the conclusions we have reached upon other contentions to which they are subordinate.

We thank counsel, both those representing the claimants and those who appeared in behalf of the Government, for the valuable assistance they have rendered the court by the thorough presentation of the many and complicated questions involved in these cases.

Motion denied.

WILLIAM R. HOOPER, ADMINISTRATOR, v. THE UNITED STATES, AND OTHER CASES¹

[No. 3694 French Spoliations. Decided November 14, 1887]

On the Proofs

This is the fourth decision in the French Spoliation Cases. See *Gray's Case* (21 C. Cls. 340); *Holbrook* (*ibid.* 434); *Cushing's* (22 *ibid.* 1). The important subjects considered are: The duration of the treaties with France; the right of uninsured owners to constructive insurance; the status of American vessels commissioned to attack French men-of-war and carrying armaments; the blockade of British ports in the West Indies; the liability of France for salvage on recapture; the measure of damages for freight earnings.

- I. The treaties with France, 1778, constitute the rule by which all differences between the two nations are to be measured after February 6, 1778, and before July 7, 1798. Subsequent to the latter date they are governed by international law.
- II. A treaty is in its nature a contract, and if the consideration fail or important provisions be broken by one party, the other may declare it terminated.
- III. Abrogation of a treaty may be justified by a change of circumstances.
- IV. The circumstances justified the United States in annulling the treaties of 1778; and the Act of July 7, 1798, was effective as between nations. By the enactment the compacts ended.

¹Court of Claims Reports, vol. 22, page 408.

- V. The insurance to be allowed to owners in French Spoliation Cases is neither constructive insurance nor insurance "to cover," but premiums actually paid.
- VI. A vessel fitted for the purpose of seizing French armed vessels under the Act of July 9, 1798, was legitimate prize in the limited war then defined by Congress; but the arming of a merchant vessel strictly for defense whose only object was trade did not authorize condemnation, even if a license under the *Act of June 25, 1798*, or the *Act of July 9, 1798* (1 Stat. L., pp. 512, 578), were found on board.
- VII. A vessel may be subject to seizure though not liable to condemnation; and if there be probable cause, prize courts may award the captors costs though the vessel be not good prize.
- VIII. No actual blockade was maintained by the French of any British port in the West Indies during the period of French spoliations. Therefore a provision-laden ship bound for a British port was not subject to condemnation while the treaties of 1778 remained in force.
- IX. The burden of proof in prize proceedings is on the vessel; she must clear herself from suspicion; but no particular paper is indispensable; an honest, commercial, lawful voyage may be shown though no paper be produced.
- X. The spoliations of France were illegal, and admitted by France; but by the treaty of 1800 were surrendered in consideration of a release from France of her claims against the United States.
- XI. Salvage is remuneration for aid in case of danger. During the period of French spoliations the conduct of the French prize courts rendered recapture a rescue from actual danger, and the recaptors entitled to salvage.
- XII. Freight earned is an element of value in property lost; full freight may be often recoverable although the vessel may not reach her destination; but in these cases the court adopts the general rule of commercial usage, two-thirds of the full freight as the measure of damages.
- XIII. When a vessel is actually under contract for a voyage to one port, thence to proceed to another, she has a present existing title in the freight money of the entire voyage; but this does not extend to a mere expectancy of finding a cargo at her first port.

The Reporters' statement of the case:

The first report to Congress in these cases was made on the first day of the present term, December 6, 1886. The cases reported and the findings sent up will be found in the case of *Cushing* (22 C. Cls. 1). Those findings and the opinions of this court in *Gray's Case*, in *Holbrook's Case*, and in *Cushing's Case* were likewise published by Congress, and constitute Miscellaneous Document No. 6, H. R., Forty-ninth Congress, second session.

The opinion in the present case of Hooper was delivered November 7, 1887. The findings will form a part of the second report to Congress.¹ They are as follows:

I. The schooner *John*, a duly registered vessel of the United States, of which John C. Blackler was master, sailed on a commercial voyage from the port of Salem, Mass., bound for Martinique with a cargo of codfish, hogshead bungs, and lumber, owned, one-half the vessel and the whole of the cargo, by William Gray, now deceased, of whom the claimant William Gray, of Boston, Mass., is the duly appointed administrator, and the other half of the vessel by William Blackler, now deceased, of whom the claimant William R. Hooper is the appointed administrator; all citizens of the United States.

She was of 111 tons, with seven men, had two guns, and carried a letter of marque.

II. Said vessel while lawfully pursuing her voyage was seized on the high seas, near Martinique, by the French frigate *La Syrene* (or *Cyren*) on the first day of February, 1800, and there burned, sunk, and destroyed. The captain was taken by said frigate into the French port L'Orient, where proceedings were instituted in a prize court, wherein claim was made in behalf of the owner, Gray, for payment for said vessel and cargo.

It appears that "the seizure was decided upon as much on account of default in the production of her crew list (*rôle d'équipage*) as that there was found on board a commission of war with instructions to attack French ships," elsewhere in the record called a letter of marque to attack *armed* French ships, and judgment was given against the claimant.

III. The case was taken to the council of prizes at Paris, where the captain alleged "that neither he nor his crew were allowed to take their baggage before the ship was set on fire, and that their captor took away the sails, provisions, and everything else which they thought proper." The French commissioner in his argument for the French Government before that tribunal, said, among other things, "I would argue willingly for the release of both (vessel and cargo) according to the provisions of articles of the agreement of the 8th Vendemiaire, year 9, if the property were still intact, without preliminary judgment, but this is not Mr. Gray's case, since the ship *John* was sunk and the owner had no profit from her." "I think that in the decision it

¹See Mis. Doc. No. 5, Senate, Fiftieth Congress, first session.

is fair that the council should recommend Mr. Gray to have recourse to his minister to request him to cause the fact of this carrying away to be verified, and obtain from the justice of the Government the indemnification which may be due him."

The council decided and entered a decree that "the council declares the merchant, William Gray, Jr., not justified in his claim for the value of the ship *John* and cargo, but with liberty to appeal to the Government for justice in regard to the property which he proves to have been removed from said vessel by the crew of the frigate *Syrène*."

Mr. William E. Earle, Mr. William Gray, Mr. Edward Lander, Mr. George S. Boutwell, Mr. A. H. Cragin, Mr. Leonard Myers, Mr. Lawrence Lewis, Jr., Mr. James Lowndes, Mr. Augustine Chester, and Mr. S. Prentiss Nutt were heard for claimants.

Mr. Benjamin Wilson and Mr. Charles S. Russell (with whom was *Mr. Assistant Attorney-General Howard*) for the defendants.

DAVIS, J., delivered the opinion of the court:

The court has now delivered three opinions upon general issues raised in the French Spoliations Cases. The first related to the broad questions as to the validity, against France, of the claims as a class, and the resulting liability of the United States to the claimants; the second was directed more especially to forms of pleading, the value of evidence, and rights of insurers; while the third disposed of a motion made by the defendants for a rehearing of the general questions discussed in the first opinion. (*Gray, administrator, v. The United States*, 21 C. Cls. 340; *Holbrook, administrator, v. The United States*, 21 C. Cls. 334; *Cushing, administrator, v. The United States*, 22 C. Cls. 1.)

A large number of cases have since been argued and submitted to the court, and certain general questions are found raised in many of them. Those questions we shall now proceed to discuss, as well as two points which were sent back by the court for further argument.

It is urged by the claimants that the treaties of 1778 remained in force, notwithstanding the abrogating act of July 7, 1798, until the final ratification of the treaty of 1800, and that these treaties prescribe the rule by which all the spoliation claims are to be measured. This position is denied by the Government.

For the purpose of this branch of the case, the period of the spoliations may be divided into two parts: that prior to July 7, 1798, and that subsequent thereto and prior to the ratification of the treaty of 1800.

As to the first period, we find the position on both sides to have been consistent, which a few citations covering different years will clearly show.

In February, 1793, the National Convention granted substantial favors to the United States, among them opening the ports of the colonies to American ships, and granting to produce carried in American bottoms duties the same as those imposed upon French vessels (Senate, 19th Cong., 1st sess., Doc. 102, p. 35). This was followed by the decree of March 26, 1793, granting new favors to what the Convention called their "ally nation" (*ibid.*, p. 36). Soon after this M. Le Brun, the minister of foreign affairs, replying to a complaint from our minister, Mr. Morris, said that he had requested the minister of marine "to prevent in the future the vessels of our good allies from being exposed to the attacks of our ships of war and privateers" (*ibid.*, p. 38). Upon the 9th May, 1793 (*ibid.*, p. 42), the Convention passed a decree authorizing the arrest of neutral vessels laden wholly or in part with neutral property and bound to an enemy port, or laden with enemy merchandise. Mr. Morris immediately demanded that the United States be exempted from the operation of this decree as contrary to the terms of the treaty of commerce (*ibid.*, p. 44). His request was complied with, the Convention's action in this regard being based upon the sixteenth article of that treaty (*ibid.*, p. 46).

Now occurred a curious incident in legislative history. Five days after the passage of the exemption the Convention reversed its action. Mr. Morris protested (*ibid.*, p. 47), and the 1st July the Convention again decreed "that the vessels of the United States are not comprised in the dispositions of the decree of the 9th May, conformably to the sixteenth article of the treaty concluded the 6th of February, 1778." July 27th this exception was annulled and the United States were again thrown under the effect of the original decree of the preceding May (*ibid.*, p. 50). Morris wrote Jefferson, then Secretary of State: "The decree respecting neutral bottoms, so far as it respects the vessels of the United States, has, you will see, been bandied about in a shameful manner. I am told, from Havre, that it is by the force of money that the determinations which violate our rights have been

obtained; and, in comparing dates, events, and circumstances, this idea seems to be but too well supported" (*ibid.*, p. 52). Prior to this Mr. Morris had written the minister of foreign affairs asking that the matter be fixed definitely, otherwise "we must expect to see that species of dispute multiplied, in which cupidity on the one hand and fear on the other will give place to the calumnious insinuations, which lead uninformed persons to think that the interests of individuals might influence the national decisions (*ibid.*, p. 47). This note was followed by the exemption of July, soon after which Morris laid before the foreign office more specific charges (*ibid.*, p. 51), notwithstanding which the exemption was again reversed. In all this transaction the existing force of the treaties of 1778 was nowhere denied, and in the two exception was expressly admitted.

At this time Genet was carrying on his objectionable course in the United States under the shelter, as he contended, of the treaties, whose binding effect Mr. Jefferson did not deny, while he disputed Genet's construction of them (*ibid.*, pp. 53 *et seq.*).

Mr. Morris still endeavored to secure exemption from the May decree, but without success, and finally he wrote, during October, 1793, that in effect the minister of foreign affairs had acknowledged and lamented to him the impropriety of the decree, "but unable to prevail over the greater influence for the repeal of it, he is driven to the necessity of exercising a step which it is not possible to justify. There is no use in arguing with those who are already convinced, and where no good is to be expected some evil may follow. I have, therefore, only stated the question on its true ground, and leave to you in America to insist on a rigid performance of the treaty or slide back to the equal state of unfettered neutrality" (*ibid.*, p. 75).

Mr. Monroe now succeeded Mr. Morris in Paris, and writing home that he "felt extremely embarrassed how to touch again upon their [the French] infringement of the treaty of commerce whether to call on them to execute it, or leave that question on the ground I had first placed it. . . . Upon full consideration I concluded that it was the most safe and sound policy to leave this point where it was before" (*ibid.*, p. 85). He evidently made a distinction between "advising and pressing" the execution of the treaty and insisting upon its execution. Instead of demanding its execution as a right he advised it as a politic act on the part of France, fearing that a more decided course on his part would lead to a counter demand for the execution

by the United States of the guaranty clause. To this communication Monroe received from the Secretary of State a rather tart response, of which this is the important paragraph (*ibid.*, p. 87) :

The fourth head of inquiry stated in your letter shows that you were possessed of cases which turned entirely upon the impropriety of the decree, and such, too, was certainly the fact. Now, without the abrogation of the decree, so far as it represented those cases, the redress which you were instructed to demand could not be obtained. In truth there was no cause or pretense for asking relief but upon the ground of that decree having violated the treaty. Does not this view lead to the inevitable conclusion that the decree, if operative in future instances, would be no less disagreeable, and consequently that its operation in future instances ought to be prevented, a circumstance which could be accomplished only by a total repeal?

Soon after this the Convention resolved to carry into strict execution the treaty of commerce of 1778 (*ibid.*, p. 88), so that the year 1795 opened with a similar understanding on each side as to the enduring force of the treaty.

At this time commenced to circulate in France reports as to what Mr. Jay had been doing in England. Mr. Monroe thought the utmost cordiality had been restored between the two Republics, and yet feared that the prospect had become clouded by the rumors from England. In August, 1795, newspapers reached Paris, which contained the text of the Jay treaty (*ibid.*, p. 127), and so much feeling was aroused that, after considerable delay, it was decided to send an envoy to the United States to declare to our Government the dissatisfaction of the French in "respect to our treaty with Great Britain and other acts which they deemed unfriendly to them" (*ibid.*, p. 129) ; a course which Monroe endeavored to prevent.

Thereupon followed, in March, 1796 (*ibid.*, p. 131), a "summary exposition of the complaints of the French Government against the Government of the United States," in which an infraction of the treaties is relied upon as a legitimate grievance, and in answering which Monroe (*ibid.*, p. 135) tacitly admits by his argument the enduring force of those treaties.

The Jay treaty was ratified, news thereof reached Paris (*ibid.*, p. 142), and the threatening cloud burst.

The minister of foreign affairs informed Mr. Monroe that the

Directory regarded the Jay treaty as a breach of friendship, and saw "in the stipulations which respect the neutrality of the flag an abandonment of the tacit engagement which subsisted between the two nations on this point since the treaty of commerce of 1778. . . . After this, citizen minister, the Executive Directory thinks itself founded in regarding the stipulations of the treaty of 1778 which concern the neutrality of the flag as altered and suspended in their most essential parts by this act, and that it would fail in its duty if it did not modify a state of things which would never have been consented to but upon the condition of the most strict reciprocity" (*ibid.*, p. 143). Monroe argued in reply that the treaty of 1778 had not been violated, closing with a renewal of his complaints of French conduct in regard to American commerce.

Pinckney was now ordered out to succeed Monroe, but before he reached Paris France gave notice of intended reprisals (*ibid.*, p. 147), and in October (1796), Monroe received a copy of the Executive Directory's decree of July 2, 1796, with notice that it would be applied to the United States, and that his functions as minister were suspended (*ibid.*, p. 148). The decree provided that France should treat all "neutral vessels, either as to confiscations, as to searches or captures, in the same manner as they shall suffer the English to treat them." In communicating the decision of his Government, however, the French minister was careful to state that "the ordinary relations subsisting between the two people, in virtue of the conventions and treaties, shall not on this account be suspended." Pinckney arrived, but was not received, and Monroe was dismissed with language which Mr. Adams described as "studiously marked with indignities towards the Government of the United States."

This brings us to the close of 1796, and however strained the relations of the two countries had become, neither had yet endeavored to throw off the yoke of the treaties; on the contrary, all discussion was founded upon them as still in force.

In February, 1797, the French minister of foreign affairs claimed the benefit of the treaty in a fallacious argument as to the *rôle d'équipage*, suggesting incidentally that "the Federal Government doubtless had never ceased to look upon the treaty of 1778 as obligatory upon the two nations" (*ibid.*, p. 156).

The decree of the Executive Directory of March 2, 1797, which is very harsh upon neutrals, speaks of the treaties as existing in a shape

modified by the Jay treaty (*ibid.*, p. 160). In April succeeding, the condemnation of an American vessel is excused as in accordance with treaty; and this is again done in the following November. The instructions to Pinckney, Marshall, and Gerry (July 15, 1797), recognized the treaties as still in force (*ibid.*, p. 453); and the 18th March, 1798, Talleyrand based his complaints upon them (*ibid.*, p. 493). Finally Congress found it necessary by statute to declare the treaties abrogated; an action clearly useless if they were non-existent; an action which in effect admitted their continuing force to that day.

The treaties of 1778, particularly the treaty of commerce, which is the important one for our purposes, were in existence until the passage of the abrogating act. Whatever disputes occurred between this country and France during the disturbed period following the conclusion of the Jay treaty arose from differences of interpretation of various clauses of the Franco-American treaty, and on neither side do we find seriously advanced a contention that the treaties were not in existence and were not binding upon both nations. The United States distinctly urged their enduring force, while the French departed from this position only in this (if it be a departure), that the Jay treaty introduced a modification into their treaty with us, of which they were entitled to the benefit.

We are of opinion that the treaties of 1778, so far as they modified the law of nations, constituted the rule by which all differences between the two nations were to be measured after February 6, 1778, and before July 7, 1798.

As to the period after July 7, 1798:

On that date the abrogating act passed by the Congress was approved by the President and became a law within the jurisdiction of the Constitution; a law replacing to that extent the treaties, and binding upon all subordinate agents of the nation, including its courts, but not necessarily final as the annulment of an existing contract between two sovereign powers.

A treaty which on its face is of indefinite duration and which contains no clause providing for its termination may be annulled by one of the parties under certain circumstances. As between the nations it is in its nature a contract, and if the consideration fail, for example, or if its important provisions be broken by one party, the other may, at its option, declare it terminated. The United States have so held

in regard to the Clayton-Bulwer treaty, as to which Mr. Frelinghuy-
sen, then Secretary of State, wrote Mr. Hall, minister in Central
America (July 19, 1884):

The Clayton-Bulwer treaty was voidable at the option of the
United States. This, I think, has been demonstrated fully on two
grounds. First, that the consideration of the treaty having failed,
its object never having been accomplished, the United States did
not receive that for which they covenanted; and, second, that
Great Britain has persistently violated her agreement not to col-
onize the Central American coast.

Here concur two clear reasons for annulment, failure of considera-
tion and an active breach of contract.

Abrogation of a treaty may occur by change of circumstances, as:

When a state of things which was the basis of the treaty, and
one of its tacit conditions, no longer exists. In most of the old
treaties were inserted the *clausula rebus sic stantibus*, by which
the treaty might be construed as abrogated when material cir-
cumstances on which it rested changed. To work this effect it is
not necessary that the facts alleged to have changed should be
material conditions. It is enough if they were strong induce-
ments to the party asking abrogation.

The maxim "*Conventio omnis intelligitur rebus sic stantibus*"
is held to apply to all cases in which the reason for a treaty has
failed, or there has been such a change of circumstances as to
make its performance impracticable except at an unreasonable
sacrifice. (Wharton's Com. Am. Law., § 161.)

Treaties, like other contracts, are violated when one party neg-
lects or refuses to do that which moved the other party to engage
in the transaction. . . . When a treaty is violated by one
party in one or more of its articles, the other can regard it as
broken and demand redress, or can still require its observance.
(Woolsey, § 112.)

The United States annulled, or at least attempted to annul, the
treaties with France upon the grounds, stated in the preamble of the
statute, that the treaties had been repeatedly violated by France, that
the claims of the United States for reparation of the injuries committed
against them had been refused, that attempts to negotiate had been
repelled with indignity and that there was still being pursued against
this country a system of "predatory violence infracting the said treaties
and hostile to the rights of a free and independent nation." Such

were the charges upon which was based the enactment that "the United States are of right freed and exonerated from the stipulations of the treaty and of the consular convention heretofore concluded between the United States and France, and that the same shall not henceforth be regarded as legally obligatory on the Government or citizens of the United States."

The treaties therefore ceased to be a part of the supreme law of the land, and when Chief-Justice Marshall stated, in July, 1799 (*Chirac v. Chirac*, 2 Wheaton, 272), that there was no treaty in existence between the two nations, he meant only that within the jurisdiction of the Constitution the treaties had ceased to exist, and did not mean to decide, what it was exclusively within the power of the political branch of the Government to decide, that, as a contract between two nations, the treaties had ceased to exist by the act of one party, a result which the French ministers afterwards said could be reached only by a successful war.

The only question we have now to consider is that of the international relation. The annulling act issued from competent authority and was the official act of the Government of the United States. So far as it was within the power of one party to abrogate these treaties it was indisputably done by the act of July 7, 1798. Notwithstanding this statute, did not the treaties remain in effect to this extent, if no further, that they furnish a scale by which the acts of France, which we are charged to examine, are to be weighed; and in considering the legality of those acts are we not to follow the treaties where they vary the law of nations? The claimants in very learned and philosophical arguments contend for the affirmative.

In the first place we are referred by them to the course of the Executive; this, it is said, is binding upon the judiciary, and is favorable to their contention. This position we will first examine.

In 1829 the Supreme Court had occasion to construe the treaties relating to the purchase of Louisiana, particularly that of San Ildefonso. The Executive had already given an interpretation to that instrument, and Marshall, Ch. J., who delivered the opinion of the court, said on this point (*Foster et al. v. Neilson*, 2 Peters, 253):

In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own Government. There being no common tribunal to decide between them. each deter-

mines for itself on its own rights, and if they can not adjust their differences peaceably, the right remains with the strongest. The judiciary is not that department of the Government to which the assertion of its interests against foreign powers is confided; and its duty commonly is to decide upon individual rights, according to those principles which the political departments of the nation have established. If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous. We think, then, however individual judges might construe the treaty of San Ildefonso, it is the province of the court to conform its decisions to the will of the legislature if that will has been clearly expressed (p. 307).

In *United States v. Arredondo* (6 Peters, 711), and in *Garcia v. Lee* (12 Peters, 511), this principle was acknowledged and affirmed, while later in *Williams v. Suffolk Insurance Company* (13 Peters, 415), the court said as to the recognition of Buenos Ayres (p. 420):

And can there be any doubt that when the Executive branch of the Government, which is charged with our foreign relations, shall in its correspondence with a foreign nation assume a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department? And in this view it is not material to inquire, nor is it the province of the court to determine, whether the Executive be right or wrong. It is enough to know that in the exercise of his constitutional functions he has decided the question. Having done this under the responsibilities which belong to him it is obligatory on the people and Government of the Union. . . . In the cases of *Foster v. Neilson* (2 Peters, 253, 307), and *Garcia v. Lee* (12 Peters, 511), this court have laid down the rule that the action of the political branches of the Government in a matter that belongs to them is conclusive.

We find in *Phillips v. Payne* an even stronger affirmance of this position when the court say that in cases like it "the judicial is bound to follow the action of the political department of the Government and is concluded by it" (92 U. S. 130).

The action of the Executive is, then, conclusive upon the judiciary when that action is taken within the jurisdiction given by the Constitution. That instrument marks out with marvelous clearness and foresight the duties assigned to each of the three branches of Government therein created; within its own domain each of these branches is supreme, the executive no less than the legislative, the legislative no

less than the judiciary, and the judiciary no less than either of the other two. How does this rule apply to the cases now before us? The legislature, with the President who approved the bill, have annulled the treaties to the extent of whatever power they may have had in the premises, which is all the power possessed by the United States over the subject-matter. Do subsequent acts of the Executive alone under these circumstances, acts done in an effort to procure compensation for injured citizens, statements made in positions assumed in a negotiation, many of them perhaps taken argumentatively, others perhaps advanced in an effort to reach a middle ground upon which both parties could stand and which would result in substantial advantage to the nation and its individual citizens; do such acts, statements, or positions necessarily bind us here?

The statute which gives us all the jurisdiction we have over these claims requires us to examine, not those claims which the United States advanced, but those claims of specified classes which were "valid" "upon the French Government." It can not be seriously contended that because the Executive pressed a claim that the claim was therefore "valid" as between the nations. The Act clears any doubt on this point, if there could be any, by prescribing the test we are to apply in ascertaining the validity of a claim; that test is "the rules of law municipal and international and the treaties of the United States applicable to the same."

The distinction we have heretofore made must be emphasized between the position and jurisdiction of this court under this very exceptional statute, and their position and jurisdiction, or those of any other court of the United States, when acting under general laws, whether statutory or unwritten.

Because the President urged a claim upon France it did not necessarily become as between France and the United States a "valid" claim. The rule as to the effect of Executive decision applies as well in France as in the United States; France resisting the claim may contend with equal force that her position is correct, and yet one of the parties to the dispute must be wrong. This *reductio ad absurdum* seems hardly necessary, and yet it serves to illustrate the distinction we seek to make clear as to this court's peculiar jurisdiction. Suppose the decision of the Executive, even in the case assumed, be binding upon the judiciary administering the law within the United States, and the authorities do not go to this extent, still it does not follow that

such a decision upon any of these claims is binding upon us now. We are instructed to discover, not what the Executive believed or contended for or argued, but what claims were in fact and in law "valid" as against France, and valid by the rules of law, municipal and international, and the treaties.

The contention has, however, other aspects, which must have serious examination; and it therefore becomes necessary to see what was the contention of this Government as to the treaty rules after the passage of the annulling statute. For this purpose we must again turn to the correspondence.

It is well to bear in mind that the question of the guaranty had well nigh been eliminated from discussion. France had never formally asked its enforcement; on the contrary, had preferred that we should remain at least nominally neutral that she might reap the benefit of our food supply. Monroe had feared that too strong a position on our part might bring about a demand for the aid pledged; but Pickering had no apprehension, and clearly regarded the obligation as without practical danger. Fear of the guaranty hampered our officers; but the real practical difficulty on the French side was the Jay treaty; on ours, the spoliations.

Monroe was dismissed; Pinckney was not received; the Pinckney, Marshall, Gerry mission was not officially recognized, and they had returned home, when, in October, 1799, Mr. Pickering, Secretary of State, addressed to Messrs. Ellsworth, Davie, and Vans Murray, the newly appointed ministers to France, their instructions, in which under thirty different heads, concluding with seven *ultimata* he set forth the position of the United States. He told them that the conduct of France would well have justified an immediate declaration of war, but desirous of maintaining peace and being willing to leave open the door of reconciliation, the "United States contented themselves with preparations for defense, and measures calculated to protect their commerce" (Doc. 102, p. 561). The claims for "spoliation" are to be advanced immediately as an indispensable condition of a treaty, and all captures and condemnations are to be deemed "irregular or illegal when contrary to the law of nations generally received and acknowledged in Europe, and to the stipulations in the treaty of amity and commerce of the 6th of February, 1778, fairly and ingenuously interpreted, while that treaty remained in force, especially when made and pronounced."

In this instruction, then, Mr. Pickering draws the line very distinctly between the standard of demand as to claims arising prior to the annulling statute and those founded upon acts committed subsequent thereto. Further on he says (*ibid.*, p. 570) :

The seventeenth and twenty-second articles of the commercial treaty between the United States and France of February 6, 1778, have been the source of much altercation between the two nations during the present war. The dissolution of that and our other treaties with France leaves us at liberty with respect to future arrangements; with the exception of the now preferable right secured to Great Britain by the twenty-fifth article of the treaty of amity and commerce. In that article we promise mutually that while we continue in amity, neither party will in future make any treaty that shall be inconsistent with that article or the one preceding it. We can not, therefore, renew with France the seventeenth and twenty-second articles of the treaty of 1778. Her aggressions, which occasioned the dissolution of that treaty have deprived her of the priority of rights and advantages therein stipulated.

He speaks of the "dissolution" of the treaties as of an existing fact, says the United States can make no treaty, that is, no new treaty inconsistent with the Jay treaty, that therefore they can not "renew"—note the word—certain articles of the French treaty; in short, the whole instruction is founded upon an admission at least, if not an assertion, that the treaties no longer were in force.

The newly-appointed ministers, acting under these instructions, opened negotiations by proposing to arrange, first, claims of citizens of either nation, whether founded on contract, treaty, or the law of nations, and then, to stipulate for reciprocity and freedom of commercial intercourse (*ibid.*, p. 580). The French, however, thought the first object of negotiation should be "the determination of the regulations and the steps to be followed for the estimation and indemnification of injuries for which either nation may make claim for itself, or for any of its citizens. And the second object is to assure the execution of treaties of friendship and commerce made between the two nations" (*ibid.*, p. 581). We have already so fully considered the details of this long negotiation (21 C. Cls. 340 *et seq.*) that they need not now be repeated. A careful rereading of all the correspondence which we have been able to obtain on this subject but confirms our previous conclusion that—

Starting under their instructions, events had forced the ministers to offer unlimited recognition of the treaties of 1778, coupled with a pecuniary equivalent to extinguish in the future their most onerous provisions; even this was not accepted, and the French, returning to their original ground, said that no indemnity could be granted unless the treaties were recognized without qualification as to the future, and this they said with the avowed object of avoiding the payment of indemnity.

The American ministers recognized that the French contention had substantial value, so much so that they offered 8,000,000 francs to settle it; but they did not recognize that it was correct in fact or law, or that the annulling act was without effect. On the contrary they argued:

A treaty being a mutual compact, a palpable violation of it by one party did, by the law of nature and of nations, leave it optional with the other to renounce and declare the same to be no longer obligatory. . . . For a wrong decision it would doubtless be responsible to the injured party, and might give cause for war; but even in such case, its act of public renunciation being an act within its competence would not be a void but a valid act, and other nations whose rights might thereby be beneficially affected would so regard it. (Doc. 102, p. 612.)

Finally, the second article of the treaty of 1800, as signed in Paris, expressly stated that the ministers plenipotentiary of the two parties were not able to agree respecting either the treaties or indemnities. These points then remained as they were at the opening of the negotiation.

We fail to find that the Executive did, after the passage of the annulling statute, recognize the existing force of the treaties as an international obligation, whatever value may have been accorded to the claim of France that one party was without power to abrogate them.

The course of the Executive in the long contentions with France is not binding upon us now under the jurisdiction given by the statute of January, 1885. That statute grants a very peculiar power, imposes upon us a very original duty—that of examining in the light of law, municipal and international, and in the light of the treaties, the validity of the claims of this Government against that of France. Such a grant of jurisdictional power necessarily negatives any binding pre-

sumption founded upon Executive action. The President, individually and through the Secretary of State, expressly and repeatedly demanded satisfaction of the spoliation claims. This was of course known to the legislature which directed us to investigate these very claims. The Congress does not do a vain act, and to require us to examine the validity of claims under a rule of law which presupposes them to be valid because the Executive urged them in diplomatic negotiation would be vain. The intention of the statute is that we shall not be concluded by the President's position in these negotiations, but shall, under the standard set for us, inquire afresh as to the claims' "validity" against France. Even if this were not so, still there is nothing in the action of the Executive, after the act of 1798, tending to show an intention to recognize the continuing existence of the treaties. On the contrary, the whole argument proceeded upon the opposite hypothesis.

Claimants contend that not the act of 1798 but the agreement to expunge the second article of the treaty of 1800 terminated the treaties of 1778. The rescission of that article undoubtedly terminated the dispute as to the existence of these treaties and removed that dispute from the forum of international discussion. We are not prepared to admit that it recognized as valid the contention of France as to the treaties, although it recognized that the contention had substantial value. A claim may be admitted to have value for purposes of negotiation or compromise without an admission of its validity in fact or law. This is true in private affairs, and is especially true in diplomacy where questions of national pride, tradition, custom, and pique have to be considered most carefully and often are of most serious importance.

Counsel urge that France insisting the treaties remained in force should be bound by them, and they make the apt illustration that if the two nations had agreed at the time upon mutual indemnities France would have been held to the treaty rules. This assumption is probably correct. France having obtained the benefit she desired would in justice be bound by the corresponding obligation. "*Qui sentit commodum sentire debet et onus.*" But that is not this case, for France entirely failed to secure a recognition of the continuing force of the treaty.

The treaty of 1800 contained a provision that "property captured and not yet definitively condemned" should be restored upon produc-

tion alone of the passport of 1778. These captures must, in almost all instances if not in all, have taken place subsequent to the annulling statute, and it is urged with much force that if the treaties were non-existent France was entitled to demand the proofs required by the general law of nations; as she expressly yielded this point and, as to these cases, agreed to abide by the treaty rule, therefore it can not be doubted (urge counsel) that had these claims now before us been taken into the treaty of 1800 they would have been subjected to the same standard.

Perhaps they would have been. France, obtaining treaty recognition, would have been bound by treaty rules; but this did not occur, and as France failed to obtain treaty recognition is she therefore to be bound by treaty rules because in one instance she made a special exception in specific terms? We think not. A treaty changes the law of nations only in so far as it contains provisions to that effect. The parties may covenant that as between themselves the law of nations shall not apply in particular instances; except in those instances that law remains in force.

The treaties had served their purpose; the conditions which they contemplated had changed. Whatever may have been the justice of French complaints of our course with Great Britain, and whatever may have been her rights under the circumstances, still she had so invaded the rights of the United States to free commerce in innocent cargoes upon the high seas, that a case was presented of such failure of consideration, and of such active infraction of the treaties, that this country was in a position to proclaim them ended.

Free ships, free goods, had become a dead letter. The passport which the treaty prescribed as a sufficient protection was disregarded, and various other aggressions upon the shipping of the United States were committed; aggressions admittedly forbidden by the treaty provisions.

We are of opinion that the circumstances justified the United States in annulling the treaties of 1778; that the act was a valid one, not only as a municipal statute, but as between the nations; and that thereafter the compacts were ended. We fail to find any agreement by France as to these claims to submit to the treaty rules after July 7, 1798, the treaties not being recognized by us, and we conclude that the validity of claims not expressly mentioned in the treaty of 1800, which arose after July 7, 1798, is to be ascertained by the principles of the law of

nations recognized at that time, and not by exceptional provisions found in the treaties of 1778.

Insurance to cover is that amount of insurance which in case of accident will entirely reimburse the insured for his loss. It includes not only the value of the property, but also the cost of the insurance procured to protect it.

Phillips in his work on insurance thus states the question argued here (§ 1221):

The premium on the premium is to be included in computing the amount to be insured in order to cover the interest and replace the exact value of the subject in case of total loss.

Some of the claimants ask that they be allowed unpaid premiums of insurance as an element of the value of property lost, and if so that such premium be allowed upon the theory of insurance to cover.

The able arguments and briefs of counsel for claimants on these questions have been listened to and examined with great care. Whatever difficulty we might find were the matter here presented for the first time is removed by the precedents established by the Supreme Court. In the *Anna Maria* (2 Wharton, 325), the court allowed "the value of the vessel and the prime cost of the cargo with all charges, and the premium of insurance, where it has been paid, with interest." In *Malley v. Shattuck* (2 Cranch, 458), the court said (citing *The Charming Betsy*):

In pursuance of that rule the rejection of the premium for insurance, that premium not having been paid, is approved: but the rejection of the claim for outfits of the vessel and the necessary advance to the crew is disapproved. Although the general terms used in the case of *The Charming Betsy* would seem to exclude this item from the account, yet the particular question was not under the consideration of the court, and it is conceived to stand on the same principle with the premium of the insurance, if actually paid, which was expressly allowed.

Following the Supreme Court we shall allow premiums of insurance when actually paid, and not otherwise.

In cases heretofore submitted a question arose as to the effect upon claimants' rights of the following facts, or either of them, should they or either of them be found to exist:

A. That the vessel acted as a privateer.

B. That the vessel possessed the license or authority described in either the Act of June 25, 1798, or in the Act of July 9, 1798, authorizing the class of seizure described in those acts or in the Act of May 28, 1798.

These questions were ordered to be and have been reargued.

The provisions of the three laws above recited are very different in effect, that of the latest date being the one most important in the consideration of these cases. The *Act of May 28* (1 Stat. L. 561), "to more effectually protect the commerce and coasts of the United States" empowered the President to give certain orders to the armed vessels of the nation and contained no allusion to vessels owned by individuals. The *Act of June 25* (*ibid.*, p. 572) authorized "the defense of the merchant vessels of the United States against French depredations," and to that end allowed the commanders and crews of such vessels to "oppose and defend against any search, restraint, or seizure" attempted by a French vessel, to "repel by force any assault or hostility" on the part of such French vessel, to "subdue and capture the same" and to retake any American vessel captured by the French.

The *Act of July 9* (*ibid.*, p. 578) gave to private armed vessels specially commissioned the same license and authority "for the subduing, seizing, and capturing any armed French vessel, and for the recapture of the vessels, goods, and effects of the people of the United States, as the public armed vessels of the United States may by law have" (§ 2). This statute, therefore, authorized private armed vessels to take any armed French vessel "found within the jurisdictional limits of the United States or elsewhere on the high seas" (§ 1), and to recapture American vessels taken by the French. (See Acts of May 28 and June 25, 1798.)

Many of the vessels whose cases are before us carried armament of some kind, and several are shown to have had a special license, commission, or authority issued probably by virtue of the power given the President in the last two acts of Congress.

The marked distinction between the act of June and that of July is in this: The former permitted defense only, except in the matter of recapture, while the latter authorized attack, but attack only on armed vessels. Nowhere in the statutes is there any permission given to molest French merchantmen, although France was then engaged in the acts of illegal seizure and condemnation from which the spoliation claims arose. Defendants urge that the arming of a merchantman

and the presence on board of a special license under the acts cited destroyed any right of recovery as against France and consequently as against the United States.

We have held (*Gray's Case*, 21 C. Cls. 375) as to the relations between the two countries during the period in question that "no such war existed as operated to abrogate treaties, to suspend private rights, or to authorize indiscriminate seizures and condemnations; that, in short, there was no public general war, but limited war, in its nature similar to a prolonged series of reprisals." There was not what Wheaton calls "a perfect war," but a war "limited as to places, persons, and things"; the Congress authorized hostilities, but only on the high seas or within the jurisdictional limits of the United States, and then only by certain specified vessels upon certain specified vessels. As far as Congress authorized and tolerated it so far might we proceed in hostile operations, and the word "enemy" goes the full length of this qualified war and no further (21 C. Cls. 371). The hostilities were confined on the side of the United States to attack on French armed ships and to recapture of our own. The capture of enemy mercantile shipping is an important mark of a state of war, one of its principal incidents, and it is significant of the relations between the two Governments that not a movement was made by Congress or the Executive in this direction.

A privateer is an armed vessel belonging to one or more private individuals, licensed by Government to take prizes from an enemy; its authority in this regard must depend altogether upon the extent of the commission issued to it, and is qualified and limited by the laws under which the commission is issued. (*The Thomas Gibbons*, 8 Cranch, 421.)

Letters of marque and reprisal may theoretically issue in time of peace (articles of Confederation signed 1778, art. 9), as they form a "mode of redress for some specific injury which is considered to be compatible with a state of peace and permitted by the law of nations" (Kent, vol. 1, p. 61). The commission authorizes "the seizure of the property of the subjects as well as of the sovereign of the offending nation and to bring it in to be detained as a pledge, or disposed of under judicial sanction in like manner as if it were a process of distress under national authority for some debt or duty withheld" (*ibid.*). Speaking very technically, a letter of marque is merely a permission to pass the frontier, while a letter of reprisal authorizes a "taking in

return," a taking by way of retaliation, a *captio rei unius in alterius satisfactionem*. The colloquial use together of the two names, letter of marque and letter of reprisals, leads sometimes to misunderstanding as to the differing effect of each, one being a simple authority to depart, the other an authority to seize property in compensation for an injury committed.

The licenses or commissions of 1798 contained no hint of intended reprisals, for no authority to seize a French merchantman is contained in them, although the French had long been capturing our commercial marine. There was, however, express authority to seize armed vessels and to recapture American vessels; that is, in its essence, authority to defend, not to attack.

Within the limits prescribed by the Congress there was war; limited, imperfect war, not general public war, but war complete as to the vessels engaged in it to the extent only of the powers given by the Congress. Following in the path marked out by the Supreme Court in the prize cases which came before them during this period, and of which *Bas v. Tingy* is a fair example, we are led to the conclusion that where a private vessel was fitted for the purpose of attacking armed French vessels, and of recapturing American vessels seized, she fell within the rules of war, and if captured, became legitimate prize. The relations of the two nations being strained to hostilities within certain distinctly defined bounds, within those bounds the active agents of either Government were subject to the rules of war, and vessels intending to seize must submit to seizure.

It does not, however, follow that every vessel having a special license under the acts of 1798, or every vessel having some armament on board, falls within this rule. Long within the memory of men now living, many portions of the ocean since freely opened to commerce were infested by pirates who boarded peaceful merchantmen, plundered the vessels, and murdered the crews, or dragged them to the horrors of slavery. The literature relating to the early part of the century is filled with anecdotes based upon the outrages of such freebooters, and the heroic deeds of those sent out by the different Governments to capture or destroy them. Vessels tempting these waters found it advisable to carry some armament, so that failing efficient convoy, or in case of other accident, they might be prepared to cope on comparatively equal terms with these robbers of the sea.

At the particular period we now are considering, to the danger from

pirates in some parts of the world was added the danger from French privateers who acted in so illegal and unjustifiable manner as to call from Lord Stowell this opinion:

It has certainly been the practice of this court, lately, to grant salvage on recapture of neutral property out of the hands of the French, and I see no reason at the present moment to depart from it. I know perfectly well that it is not the modern practice of the law of nations to grant salvage on recapture of neutral vessels, and upon this plain principle, that the liberation of a clear neutral from the hand of the enemy is no essential service rendered to him, inasmuch as that same enemy would be compelled by the tribunals of his own country, after he had carried the neutral into port, to release him, with costs and damages for the injurious seizure and detention. This proceeds upon the supposition that those tribunals would duly respect the obligations of the law of nations; a presumption which, in the wars of civilized nations, each belligerent is bound to entertain in their respective dealings with neutrals. But it being notorious to all Europe, in the present war, that there has been a constant struggle maintained between the governing powers of France, for the time being, and its maritime tribunals, which should most outrage the rights of neutral property—the one by its decrees, or the other by its decisions—the liberation of neutral property out of their possession has been deemed, not only in the judgment of our courts, but in that of neutrals themselves, a most substantial benefit conferred upon them, in a delivery from danger against which no clearness and innocence of conduct could afford any protection. And a salvage for such service has not only been decreed, but thankfully paid, ever since these wild hostilities have been declared and practiced by France, against all acknowledged principles of the law of nations and of natural justice. When these lawless and irregular practices are shown to have ceased, the rule of paying salvage for the liberation of neutral property must cease likewise.

No proof is offered that the maritime tribunals of France have, in any degree, corrected either the spirit or the form of their proceedings respecting neutral property generally: and, therefore, I shall not think myself authorized to depart from the practice that has been pursued, of awarding a salvage to the captors. (*The Onskan*, 2 Robinson, pp. 300, 301.)

And later he said:

It is certainly true that the standing doctrine of the court has been that neutral property, taken out of the possession of the

enemy, is not liable to salvage. It is the doctrine to which the court has invariably adhered till it was forced out of its course by the notorious irregularities of the French cruisers and of the French Government, which proceeded without any pretense of sanction from the law of nations, to condemn neutral property. On these grounds it was deemed not unreasonable by neutrals themselves that salvage should be paid for a deliverance from French capture. The rule obtained early in the war, and has continued to the present time. It is said that a great alteration has taken place in the French proceedings, and that we are now to acknowledge a sort of return of "*Saturnia regna*." This court is not informed, in a satisfactory manner, that any such beneficial change has taken place in the administration of prize law in the tribunals of France; and, therefore, it will continue to make the same decree till the instructions of the superior court shall establish a different rule. (*Eleonora Catharina*, 4 Rob. 157. See also *Talbot v. Seeman*, 1 Cranch. 1.)

In the Gulf of Mexico the danger of seizure by small vessels, technically French privateers, but actually so irresponsible to governing power as to be in form only superior to freebooters, made the possession of some armament by an innocent trader a matter of wise precaution, if not of necessity, especially as in some instances the danger from the French tribunals was nearly as great as from the privateers. We are told, for example, that vessels were condemned by such tribunals because the ship's compass had an English brand, because the cooking utensils were of English manufacture, or because the vessel was destined to an English port. The Secretary of State thus characterized the situation:

American property had even been taken when in their own ports, without any pretense, or no other than that they wanted it. At the same time their cruisers are guilty of wanton and barbarous excesses, by detaining, plundering, firing at, burning, and distressing American vessels.

The acts of the French privateers were so illegal as to be stigmatized as "piracies" both by Mr. Pickering and in the two Legislative Councils of France (Doc. 102, p. 410).

As early as June, 1793, Morris complains "of the plundering of our ships, of which complaints are daily made to me and which the present Government of the country is too feeble to prevent" (*ibid.*, p. 48), and he writes to the French minister "that it will be very difficult, and

perhaps impossible, to prevent your privateers from committing illegal and outrageous acts as long as they are permitted to bring into your ports all the American vessels laden with articles of food for countries at war with France" (*ibid.*, p. 49). Later he informs the Secretary of State that "in the present state of the country the laws are but little respected; and it would seem as if pompous declarations of the rights of man were reiterated only to render the daily violation of them more shocking" (*ibid.*, p. 52). In October he says "the courts chicane very much here," and he speaks of their proceedings as "iniquitous" (*ibid.*, p. 67). In December, 1796 (*ibid.*, p. 151), Major Mountflorencia, in his general report as to American commercial interests in France, says that on the 27th of the preceding April power had been given to the tribunals of commerce in every port of France to take cognizance in the first instance of every matter relative to captures at sea, with an appeal to the civil tribunals of the different departments, and with a reference in certain instances to the minister of justice.

He adds:

The tribunals of commerce are chiefly composed of merchants, and most of them are directly or indirectly more or less interested in the fitting out of privateers, and, therefore, are often parties concerned in the controversies they are to determine upon.

In illustration he cites the condemnation of the *Royal Captain*, saying that most of the "judges were concerned in the capturing privateer."

In January, 1797, Mr. Pickering wrote to Mr. Pinckney as follows:

The commissioners and special agents of the French Republic in the West Indies are destroying our commerce in the most wanton manner. They have issued orders for taking all American vessels bound to or from English ports—not those only which the English occupy in St. Domingo, but those of their own islands. They condemn without the formality of a trial. These orders appear from the information I have received to have been issued in consequence of letters from Mr. Adet, who, you will see in his note of November 15, said the French armed vessels were not merely to capture American vessels, but to practice vexations towards them; and who, I am further informed, wrote to the commissioners that they could not treat the American vessels too badly. This state of things can not continue long. It makes little difference whether our vessels go voluntarily to French ports or are carried in as prizes. In the latter case they condemn without

ceremony, and, in the former, they forcibly take the cargoes, heretofore with promises of payment, which they generally broke; and now, I am told, without even deigning to give their faithless promises (*ibid.*, p. 154).

In the following February he writes again to Pinckney, saying (*ibid.*, p. 154):

The spoliations on our commerce by French privateers are daily increasing in a manner to set every just principle at defiance. If their acts were simply the violation of our treaty with France the injuries would be comparatively trifling, but their outrages extend to the capture of our vessels merely because going to or from a British port. Nay, more, they take them when going from a neutral to a French port. In truth, there is, in a multitude of cases, little difference whether our vessels are carried in as prizes or go voluntarily to the French ports in the islands for the purposes of traffic; the public agents take the cargoes by force and fix their own terms, giving promises of distant payment, which are seldom duly performed. With regard to the vessels carried in as prizes, the agents and tribunals of the French Government act in concert with the privateers. The captured are not admitted to defend their property before the tribunals; the proceedings are wholly *ex parte*. We can account for such conduct only on the principle of plunder, and were not the privateers acting under the protection of commissions from the French Government, they would be pronounced pirates. Britain has furnished no precedents of such abominable rapine.

In April, he writes again (*ibid.*, p. 164) that "the depredations of the French in the West Indies are continued with increased outrage, and we have advices of captures and condemnations in Europe which apply to no principle heretofore known and acknowledged in the civilized world." (See also *ibid.*, pp. 166, 171, 173, 174, 177.)

Citations of this kind might be multiplied, but it seems useless to do so, as the situation is familiar history. Certainly, under these circumstances, some attempt at defense was natural and excusable, if not justifiable.

Judges "are not to shut their eyes to what is generally passing in the world" (Blatchford's Prize Cases, p. 448), nor as to what has already taken place. In danger from native pirates, in danger from French privateers often as irresponsible (*Cushing's Administrator*, 22 C. Cls. 1), the mere possession of some armament by a merchantman is devoid of marked significance. It is improbable that any important

venture was sent to sea without an effort on the part of the ship-owner to protect his property and that laden on his vessel; cannon enough or muskets enough he would put on board to give his crew a fair chance of escape from a small force. The statute, however, said that no armed merchantman should receive a clearance or permit, or be suffered to depart unless the owners and the master gave bond conditioned, among other things, that the vessel should not commit any depredation, outrage, unlawful assault, or unprovoked violence upon the high seas against the vessel of any nation in amity with the United States (1 Stat. L., p. 573). Under this act no vessel having any armament could proceed to sea without bond first given, and this bond, being coupled in the acts with the issuance of special orders or license, what more natural than for the innocent merchantman, desiring only safe transit of a commercial venture, to receive in return the commission which the act provided should be given him. The *Act of July 9* (*ibid.*, p. 578) contains a similar provision, and the result of both statutes is that no private vessel carrying armament could proceed to sea without bond filed in return for which a commission might be issued.

In our view of the case it is vital to note the distinction between armament for protection simply and armament for attack upon armed vessels or for attack upon captured American vessels necessarily in charge of prize crews. A privateer is maintained for profit; the venture is most speculative in its nature, bringing large returns for great risk. Given the right to prey upon the mercantile marine, great armament is not necessary, as combat may be avoided by speed and quickness in manœuvre. The privateering authorized by the acts of 1798 was of no such nature; not a prize could be taken without conflict, for only armed vessels, or vessels in charge of prize crews, could be seized; not a merchantman was allowed to be molested. A vessel, then, fitting out under the acts of 1798 for the purpose of waging the limited hostility therein permitted, must have been prepared for battle; must have been ready to wage war. She could not mount a few guns and carry a few dozen muskets, with a small crew, when the success of her voyage depended upon the number of well-defended vessels she should send into port for condemnation. A vessel intended to act aggressively under the laws of 1798 would have to fight for every dollar brought into the pockets of the owners, master, and crew, and, knowing this, would proceed to sea with an equipment sufficient for the very serious work contemplated.

One of the vessels holding a commission under the acts of 1798 was a schooner of about 111 tons, old measurement. She had a crew of seven men, carried what was called a letter of marque, two guns, and a cargo of merchandise; she was duly cleared on a trading voyage, with instructions to the master as to the sale of the cargo and the purchase of a return venture. Such a vessel as this could not have been seriously intended to seize French armed vessels or captured American vessels defended by French prize crews. Seven men, all told, were barely enough to navigate the schooner; aside from the master, there were but three to a watch, and on an emergency it is extremely doubtful whether the total force was sufficient to handle the two guns and the vessel at the same time. Possibly some defense might have been made against a boat-load of pirates putting off from the shore while the schooner lay becalmed near it, but it is not within the bounds of possibility that such a vessel, with so slight a crew and so insignificant an armament, should contemplate attack upon a well-defended vessel.

We are told that 365 vessels, of 66,691 tonnage, carrying 6,847 men and 2,723 guns, received commissions under the acts of 1798, prior to March 2, 1799. The average tonnage per vessel was then 185 tons, the average crew 16, and the average armament 7 guns. On the other hand, one Government armed vessel (taken for illustration) of 190 tons burthen carried 18 guns and 140 men, while another of 200 tons carried the same armament and crew. So far as has yet appeared to us, no private armed merchantman made a single capture from the French, and we are assured that no such capture was made. So far as concerns the cases now before us, it would be practically impossible for such a capture to be made, for most of the vessels were small, and they were manned only for ordinary navigation and not for war, with an armament insufficient to cope with organized military force. Neither seven nor even sixteen men is a crew for a vessel intended to attack French armed ships or to recapture those manned by prize crews, and no merchantman with so small a crew and laden with valuable cargo would undergo such risk.

That Congress did not contemplate the employment in attack of small or undermanned vessels is shown by the proviso in the act of July 9, 1798, that the bond should be doubled in case "the vessel be provided with more than one hundred and fifty men," from which an inference may not unfairly be drawn that not far from one hundred and fifty was considered a fair equipment for a vessel designed to

fight. We have seen that the Government war vessels about equivalent in tonnage to the average licensed merchantman carried about one hundred and forty men, and coupling this fact with the act of Congress we reach the result already indicated by common sense, that Congress had in mind, so far as privateers were concerned, fighting ships—those able to attack a French privateer with reasonable hope of success, and not vessels with insignificant crew and armament, bound on a trading voyage, and provided with those slight means of defense which were at the time ordinarily carried by merchantmen for protection.

That armament, when carried by strictly commercial vessels bound upon trading voyages, was intended for defense is shown by the report of the House Committee, made January 17, 1799 (American State Papers, Naval Affairs, vol. 1, p. 69). They said:

Your committee begs leave to report further, that about the time of the sailing of our ships of war, and before the merchant ships were permitted to arm for their defense, our trade was in such jeopardy at sea and on the coast from French privateers, that but few vessels escaped them; that ruin stared in the face all concerned in shipping, and that it was difficult to get property insured.

Hamilton, then Secretary of the Treasury, officially expressed the opinion of his Government as to armed merchantmen in his circular of August 4, 1793, as follows:

The term privateer is understood not to extend to vessels armed for merchandise and war, commonly called with us letters of marque, nor, of course, to vessels of war in the immediate service of the Government of either of the powers at war.

Twelve days later Jefferson, in an instruction to Morris as to the English ship *Jane*, which Genet had requested might be ordered to sail, a request authorized, Genet contended, by the twenty-second article of the treaty of commerce, said (Doc. 102, p. 58):

The ship *Jane* is an English merchant vessel, employed in the commerce between Jamaica and these States. She brought here a cargo of produce from that island, and was to take away a cargo of flour. Knowing of the war when she left Jamaica, and that our coast was lined with small French privateers, she armed for her defense, and took one of those commissions usually called

letters of marque. She arrived here safely without having had any rencontre of any sort. Can it be necessary to say that a merchant vessel is not a privateer? That though she has arms to defend herself in time of war, in the course of her regular commerce, this no more makes her a privateer than a husbandman following his plow in time of war with a knife or pistol in his pocket is thereby made a soldier. The occupation of a privateer is to attack and plunder; that of a merchant vessel is commerce and self-preservation. The article excludes the former from our ports, and from selling what she has taken; that is, what she has acquired by war, to show it did not mean the merchant vessel and what she had acquired by commerce. Were the merchant vessels coming for our produce forbidden to have any arms for their defense, every adventurer who has a boat, or money enough to buy one, would make her a privateer; our coasts would swarm with them, foreign vessels must cease to come, our commerce must be suppressed, our produce remain on our hands, or at least that great portion of it which we have not vessels to carry away; our plows must be laid aside, and agriculture suspended. This is a sacrifice no treaty could ever contemplate, and which we are not disposed to make out of mere complaisance to a false definition of the term privateers.

This matter has also been specifically passed upon by the French courts. The ship *Fame*, Rust, master, was, in June, 1799, tried by the tribunal of commerce sitting at Bayonne. Several grounds were relied upon by the captors as authorizing condemnation, all of which were overruled by the tribunal. Among them was the following:

Is the letter of marque, of which the vessel was the bearer, sufficient to cause it to be considered as an enemy?

This question was thus answered:

Considering the point relative to the letter of marque of which the ship was the bearer. That the French Government without doubt is not ignorant of the delivery of like letters by the Government of the United States to the vessels of the said United States nor of the terms in which these letters are conceived. That now and up to the present time it has not been manifested that it regarded this circumstance and the act of Congress of the United States of the month of July, 1798, either as a declaration of war, or as hostilities against France, since it has not asked of the legislative body a law declaring the French nation to be in a state of war with the United States of North America. That a state of war can not be established or declared without a law of the legis-

lative body. That it does not belong to the tribunals to take notice of any step that a foreign power may take as constituting a state of war between France and itself.

That the condemnation demanded, of the said ship *Fame* and of her cargo because of the said letter of marque, can not be founded upon any law, and can not and ought not to be pronounced. The said ship besides, not having opposed any resistance, suffered itself to be visited at the summons which was made to it by the said privateer. There is, then, no occasion to accede to the demand of the captors upon this point. (See Record in case *Nathaniel Richardson, executor of Joshua Richardson et al. v. The United States*, No. 5343.)

This case was appealed to the civil tribunal of the department, and thence to the council of prizes, which latter tribunal, on the 13th December, 1800, released the vessel and cargo in accordance with the judgment of the two lower tribunals.

The *Pegou* carried ten cannon. She was provided with muskets and munitions of war.

The law officer of the French Government having charge of the case made the following points among others (see Pistoye et Duverdy, *Prises Maritimes*, vol. 2, p. 51) :

It is not enough to have or carry arms to deserve the reproach of being armed for war (p. 52).

War armament is for purely offensive use. This is shown when there is no object in the armament but attack; or at least when everything tends to prove that such is the principal object of the enterprise. . . . But defense is a natural right, and means of defense are legitimate in sea-voyages as in all other occurrences perilous to life. A vessel having but a small crew, whose cargo was considerable, was evidently intended for commerce, not for war. The arms found in this vessel were not intended for violence or hostility, but to prevent them; not to attack, but to defend. The point as to war armament, then, seems to me unfounded.

The *Pegou* was discharged with damages to her captain.

In the case of the *Friend*, of Boston, a letter of marque had been found on board; the vessel was armed for defense; there was no resistance; summons from the privateer was obeyed, and the master's instructions directed him to avoid acts of offense and to be prudent. The commissaire of the Government urged that these were not reasons for capture. The vessel was condemned on other grounds. (Pistoye et Duverdy, vol. 1, p. 501.)

Further, Article IV of the treaty of 1800, which relates to "armed" and "unarmed" merchantmen, shows that France did not stand upon the point urged here by the defense, but admitted the right of armament to the extent at least of the cases now before us, as its courts did in the cases cited above.

It is worthy of remark that two classes of license or commission were allowed by the acts of Congress. The first act authorized instructions from the President as to defense only, except that the recapture of American vessels was permitted. The second act allowed capture of armed Frenchmen. In the absence of proof as to which document a vessel possessed there can be no presumption that it was issued under the latter rather than under the former statute; in fact, the presumption, which always favors what is natural, might lean towards the possession of instructions under the first act when it appears that the crew was small, the armament light, and the object of the voyage commercial in its nature.

The distinction must not be forgotten between a legal and justifiable seizure and an illegal and unjustifiable condemnation. The seizure of a vessel may be successfully defended upon grounds which would not support a subsequent condemnation, and "prize courts deny damages when there was probable cause for the seizure, and are often justified in awarding to the captors their costs and expenses," even when the vessel and cargo are decided not good prize and are returned to their owners. (*The Thompson*, 3 Wall. 155; *Jecker v. Montgomery*, 13 How. 498; *Murray v. The Charming Betsy*, 2 Cr. 64.)

We conclude that a vessel fitted for the purpose of seizing French armed vessels and of recapturing American vessels was, when taken, legitimate prize as an actor in the limited war defined by Congress; but that the mere arming of a merchantman whose object was trade, subordinate to which was the provision for protection, did not authorize seizure and condemnation even if an instruction or license under either of the acts of 1798 were found on board. In these cases, as in every case arising between nations, technicalities must be thrown aside, and the very essence and spirit of the transaction must be discovered by the light of the facts peculiar to each case.

It is urged by the defendants that the British possessions in the West Indies were in a state of blockade and occupied in such manner as properly to be regarded in a state of siege. That, therefore, the con-

demnations of vessels bound for those ports with cargoes otherwise innocent were legal and justifiable. The argument has turned more particularly upon vessels bound for Martinique, so that for purpose of illustration we will consider the case of that island, formerly a French possession and captured by England during the war.

The defendants' argument assumes that Martinique was blockaded; that it was practically in a state of siege; that its predominant character was that of a port of military naval equipment; and therefore the seizure of neutral vessels bound to that port was justified, although the cargo was otherwise innocent.

The law of blockade is so clear that while a few citations may be given for the sake of illustration, they seem to us hardly necessary.

Kent says:

The law of blockade is, however, so harsh and severe in its operation, that in order to apply it, the fact of the actual blockade must be established by clear and unequivocal evidence; and the neutral must have had due previous notice of its existence; and the squadron allotted for the purpose of its execution must be competent to cut off all communication with the interdicted place or port; and the neutral must have been guilty of some act of violation, either by going in or attempting to enter, or by coming out with a cargo laden after the commencement of the blockade. The failure of either of the points requisite to establish the existence of a legal blockade amounts to an entire defeasance of the measure, even though the notification of the blockade has issued from the authority of the Government itself. A blockade must be existing in point of fact, and in order to constitute that existence, there must be a power present to enforce it. All decrees and orders declaring extensive coasts and whole countries in a state of blockade, without the presence of an adequate naval force to support it, are manifestly illegal and void, and have no sanction in public law. The ancient authorities all referred to a strict and actual siege and blockade. The language of Grotius is *oppidum obsessum vel portus clausus*, and the investing power must be able to apply its force to every point of the blockaded place, so as to render it dangerous to attempt to enter, and there is no blockade of that part where its power can not be brought to bear. (Vol. 1, pp. 144-5.)

The United States have contended that a blockade must be effective to be valid (note b. to Kent, vol. 1, p. 145), and admitted the principle even as to its own ports during the late war. This question has been very ably discussed in a late note from the Secretary of State, Mr.

Bayard, to the minister representing the United States of Colombia, in which, after citing authorities, the Secretary reaches the following conclusions:

After careful examination of the authorities and precedents bearing upon this important question, I am bound to conclude as a general principle that a decree by a sovereign power closing to neutral commerce ports held by its enemies, whether foreign or domestic, can have no international validity and no extraterritorial effect in the direction of imposing any obligation upon the Governments of neutral powers to recognize it or to contribute toward its enforcement by any domestic action on their part. Such a decree may indeed be necessary as a municipal enactment of the state which proclaims it, in order to clothe the executive with authority to proceed to the institution of a formal and effective blockade, but when that purpose is attained its power is exhausted. If the sovereign decreeing such closure have a naval force sufficient to maintain a blockade, and if he duly proclaims such a blockade, then he may seize, and subject to the adjudication of a prize court, vessels which may attempt to run the blockade. If he lay an embargo, then vessels attempting to evade such embargo may be forcibly repelled by him if he be in possession of the port so closed. But his decree closing ports which are held adversely to him is, by itself, entitled to no international respect. Were it otherwise, the *de facto* and titular sovereigns of any determinate country or region might between them exclude all merchant ships whatever from their ports, and in this way not only ruin those engaged in trade with such states, but cause much discomfort to the nations of the world by the exclusion of necessary products found in no other market. (Note, dated April 24, 1885. See also Hall, *International Law*, §§ 257 and 260; 3 Phillimore, 311 and 516; case of *The Sarah Star*, Blatchford's Prize Cases, 69-87; Lawrence's Wheaton, pp. 575 *et seq.*)

Sir William Scott thus laid down the rule:

To constitute a violation of blockade three things must be proved: First, the existence of an actual blockade; second, the knowledge of the party supposed to have offended; and, third, some act of violation, either by going in or coming out with a cargo laden after the commencement of blockade. (*The Betsey*, 1 Rob. Adm., p. 92. As to Berlin and Milan decrees see Woolsey, § 206.)

Therefore to justify seizure the blockade must be effective, notice must have been given, and there must be an attempt to violate it.

Was Martinique effectively blockaded?

Defendants have referred us to no authority to show that it was, and we have made such examination as the sources of historical investigation on this subject afforded without finding any statement to that effect. The records of the numerous spoliation cases in this court which have been brought to our attention throw no light on the subject, as they proceed upon the fact that the condemned vessel was bound to an enemy port or laden with enemy produce and the condemnations rest upon French decrees.

An examination of the history of Anglo-French naval operations directly affecting the West Indies discloses the following events:

February 2d, 1794, an English expedition sailed from the Barbadoes to attempt the capture of Martinique, then under the command of General Rochambeau. This expedition consisted of three ships of the line, eight frigates, four sloops, two store-ships, and one bomb, under command of Vice-Admiral Sir John Jervis, carrying something less than 6,100 troops, commanded by Lieutenant-General Sir Charles Grey. The French garrison was insignificant in number, consisting only of some 600 men, including 400 militia, while at Fort Royal was a 28-gun frigate, and at St. Pierre an 18-gun corvette. Possibly a privateer or two was also available. The British arrived off the island the 5th of February, and some idea may be gained of the heroic defense of the French from the fact that with the overwhelming force at their command the British did not obtain a surrender until the 22d of March. The forts were garrisoned, Lieutenant-General Prescott was given command, a small squadron, under Commodore Thompson, was left to cooperate with him in case of attack, and the rest of the expedition embarked the 31st March to attack St. Lucie (James' Naval History, vol. 1, pp. 217 *et seq.*), which surrendered without the loss of a life upon the 4th of April. Then followed the conquest of Grande-Terre, another expedition having taken the three small islands adjacent to Guadeloupe, called the "Saintes," and on the 20th April all Guadeloupe and its dependencies surrendered, comprising the islands of Marie Galante, Désirade, and the Saintes, at an expense of two British rank and file killed, four rank and file wounded, and five missing. A French 16-gun corvette was captured in this expedition, but was not deemed fit for service.

Early in June a French squadron of two frigates, one corvette, two large ships armed *en flûte*, and five transports anchored off the village

of Gosier, Guadeloupe, and began disembarking troops commanded by Victor Hugues, bearing the title of *commissaire civil*. After skirmishes with the British garrison and French royalists, in which Hugues's troops were successful, a considerable force of vessels and men were sent by the British to dislodge them. The result was the withdrawal of the British from Grande-Terre the 3d July, just one month after Hugues's arrival. In October the French received reinforcements, took Basse-Terre, and the 6th October, 1794, were again masters of Guadeloupe, except a small port called Fort Matilda, which, so tenacious was the resistance, they did not capture until December 10. At the close of the preceding year the British had obtained possession of Cape Nicolas Mole, Jérémie, and other French villages in San Domingo, and in February, 1794, other places on the island fell into their hands after trifling resistance. In May a strong force was sent by the British against Port au Prince, which surrendered June 4. In December the British post at Cape Tiburon was attacked and captured by French troops, assisted by three armed vessels (*ibid.*). As soon as news of Hugues's victory reached France there were dispatched to his assistance a 50-gun frigate, a 36-gun frigate, two corvettes, an armed ship or two, and eight or ten transports with 3,000 troops and suitable stores.

The arrival of this important reinforcement inspired Victor Hugues with designs against the other ceded islands. Having not only troops, but transports to convey and ships of war to protect them, this demon of republicanism, whose barbarity, as fully accredited on several occasions, was of the most revolting description, readily contrived to land soldiers at Sainte Lucie, St. Vincent, Grenada, and Dominique. Artful emissaries accompanied the troops, and soon succeeded in raising a ferment in the islands which they visited. The negroes, Caribs, and many of the old French inhabitants revolted; and dreadful were the atrocities perpetrated upon the well affected. . . . The British troops, thinly distributed from the first and since reduced by fatigue and sickness, could offer in general but a feeble resistance to the numbers of different enemies opposed to them. The garrison at Sainte Lucie, numbering 2,000 men, evacuated the island on the 19th of June (1795). By the 27th of June the "rebellion" in Dominique had been quelled "by the few British troops stationed there, assisted by the bulk of the inhabitants," St. Vincent and a part of Grenada remaining in a revolted state. (*Ibid.* 298 *et seq.*)

In April and May, 1796, the English took, without conflict, the Dutch settlements of Demerara, Essequibo, and Berbice. On the 24th May, after a stubborn combat of over a month, Sainte Lucie was captured by the British troops and vessels. June 11 St. Vincent surrendered, as a few days later did Grenada. So far as appears the French had no armed ships at either of these islands. In the preceding March the British made an unsuccessful attack upon the town and fort of Léogane, San Domingo, and a successful one upon the fort and parish of Bombarde. No French ships appear in these actions, but a squadron arrived at Cape François May 12, but returned immediately to France. (*Ibid.* 367 *et seq.*)

February, 1797, a British squadron left Port Royal, Martinique, for the purpose of attacking the Spanish colonies. Trinidad soon fell into their hands, and, touching at Martinique on the way, the squadron proceeded to Porto Rico, the attack upon which was unsuccessful. In April the French 36-gun frigate *Harmonie* was destroyed by the English near Jean Babel, while sailing under orders to convoy to Cape François, from Port au Prince and Jean Babel, a number of provision-laden American vessels captured by French privateers. An action between three of the British fleet, a French privateer, and a French battery in Carcasse Bay, is the only other engagement noted as having taken place in the West Indies during this year. (*Ibid.*, vol. II, pp. 97 *et seq.*)

The year 1798 opened with the evacuation by the British in April of Port au Prince, St. Marc, and Arcahaye, all in San Domingo, shortly after which three French 36-gun frigates landed supplies at Cape François and returned home. An engagement between the British and Spanish was the only other important naval event of this year in the Gulf. In August, 1799, the British took the Dutch island of Surinam, finding in the river a French corvette, the *Hussar*, which was added to the British navy. (*Ibid.*, p. 373.) September 13, 1800, the island of Curaçao surrendered to the British, and forty-four vessels were found lying in the harbor, but no warships. (*Ibid.*, vol. III, p. 59.)

In May, 1793, the *Hyena*, of 24 guns, and *La Concorde*, of 40 guns (the advance frigate of a French squadron of some six vessels), had an engagement off Cape Tiburon, which resulted in the defeat of the former. In July the English frigate *Boston*, after capturing the first lieutenant of the French frigate *Embuscade*, then lying in the harbor of New York, challenged the Frenchman to battle, a challenge

which was accepted; the battle took place without decided result, and during it what was supposed to be a large French squadron appeared in the offing, while two French frigates were afterwards found by the *Boston* lying in the mouth of the Delaware, where she sought refuge. In November a combat took place between *Penelope* and *Iphigenia*, on the one side and the *Insurgente* on the other, in the bight of Léogane, island of San Domingo, resulting in the defeat of the French frigate. (*Ibid.*, vol. I, pp. 88 *et seq.*)

In December, 1794, the British frigate *Blanche*, cruising off the island of Désirade, a dependency of Guadeloupe, then in French possession, cut out a government armed schooner of 8 guns, which, to escape, had anchored in the bottom of the bay of Désirade. Later the *Blanche* had an encounter with the French 36-gun frigate *Pique* off Point-à-Pitre, in which, after a battle most gallant on both sides, the *Pique* was captured. In May there was a battle in Chesapeake Bay between two English frigates and five lightly armed Frenchmen, most of them store-ships. (*Ibid.* 277 *et seq.*)

On the 4th of May, 1796, the *Spencer* engaged and captured the French gun-brig *Vulcan* in latitude 28° north, longitude 69° west.

In July, 1796, a combat without definite result took place between the frigates *Aimable* (English) and *Pensée* (French), beginning off "Englishman's Head," Guadeloupe, while in August the *Mermaid* attacked the *Vengeance* within gun fire from Guadeloupe batteries, and in July the *Quebec* was chased by two French frigates when not far from Port au Prince.

August 25, 1796, the British 20-gun ship *Raison* engaged the *Vengeance*, the *Mermaid's* former opponent, in latitude 41° 39' north and longitude 66° 24' west, without definite result. Later in the same month an English squadron captured the French frigate *Elisabeth* off Cape Henry. In September the *Médée* engaged the *Pelican* off Guadeloupe. The action had no definite result, and it appears that at this time the *Thetis* (French) and either the *Pensée* or the *Concorde* were at anchor in Guadeloupe. The *Pelican* was so much inferior to the *Médée* in armament that Hugues sent an aide-de-camp under a flag of truce to the *Saintes* to inspect her as she lay there at anchor.

On the 10th August, 1797, the 38-gun British frigate *Arethusa*, captured, after stern resistance, the French corvette *Gaieté*, sighting at about the same time the brig-corvette *Espoir*, of 14 guns, and a third vessel supposed to be a small French war vessel. Five days later the

Alexandrian, schooner of 6 guns, acting as tender to the flag-ship at Martinique and engaged in quest of French privateers, captured a privateer schooner and chased another, which escaped. September 17 the *Pelican* destroyed the French privateer *Trompeuse* off Cape St. Nicolas Mole. On the 4th October the *Alexandrian* captured the French privateer *Epicharis*. January 3, 1798, the British armed sloop *George*, of 6 guns, while on a passage from Demerara to Martinique, was captured by two Spanish privateers. Thirteen days later boats from the 20-gun ship *Babet*, then cruising between Martinique and Dominique, captured the French armed schooner *Desirée*. April 17 the British schooner *Recovery*, cruising in the West Indies, fell in with the privateer *Revanche* and compelled her to surrender. May 7 the British brig sloop *Victorieuse*, while passing to leeward of Guadeloupe, was attacked without success by two French privateers. The same vessel during the following December, aided by the 14-gun brig-sloop *Zephyr* and some troops, after an attack upon the Spanish in the island of Margarita, took out the privateer *Couleuvre*, of 6 guns and 80 men, from the port of Gurupano. July 11 boats from the British 44-gun ship *Regulus* cut out three vessels at anchor in Aquada Bay, Porto Rico. December 11 the British 22-gun ship *Perdrix* captured the French privateer *Armée d'Italie* not far from St. Thomas.

March 30, 1799, boats from the British frigate *Trent* and cutter *Sparrow* cut out a Spanish merchant ship and schooner which they found in a bay of Porto Rico, at the same time storming and carrying a small Spanish battery. April 13, the *Amaranthe*, a British 14-gun brig-sloop, captured the French letter-of-marque schooner *Vengeur* after the latter had made a noble resistance.

The officers and crew of the *Abergavenny*, stationary flag-ship at Port Royal, tired of inaction during the whole of 1797 and part of 1798, fitted out on their own account a frigate launch which was so successful in prize-taking that its proprietors were enabled to purchase with their prize money a small schooner named the *Ferret*, which became the tender of the *Abergavenny*. The *Ferret* early in October, 1799, had a very sharp encounter with a Spanish privateer without decisive result. Later in the same month the British brig-sloop *Echo* cruising off Porto Rico, chased a French letter-of-marque into Laguadille bay and cut her out, and not long after occurred the daring capture of the *Hermione* in the harbor of Puerto Cabello. In November the *Crescent* and *Calypso* adroitly saved their convoy from

a Spanish squadron. Still later in that month the *Solebay*, cruising off San Domingo, encountered a French squadron recently arrived at Cape François from France and bound to Jacmel. Strange to say, this 32-gun frigate captured all the French vessels without casualty on either side. The squadron consisted of four vessels mounting 58 guns, manned with 431 men, while the frigate carried 38 guns and about 212 men. In December an indecisive conflict took place off the island of Porto Santo between the *Glenmore* and *Amiable* in charge of an outward bound British West India convoy, and the *Sirene* and *Bergère* bound from Rochelle to Cayenne with 450 troops and Victor Hugues on board. (James, Vol. II, pp. 79 *et seq.*; 198 *et seq.*; 313 *et seq.*) Early in April, 1800, boats from the sloop *Calypso* off Cape Tiburon, carried the French privateer *Diligente*. In August the British 38-gun frigate *Seine*, cruising in the Mona passage, sighted the *Vengeance*, bound from Curaçao to France, which, after a sharp combat, surrendered. In October the schooner *Gypsie* (British) cruising off Guadeloupe, captured the *Quidproquo* of 8 guns. (James, Vol. III, pp. 27 *et seq.*)¹

We have now set forth in this catalogue at somewhat tedious but necessary length every naval action (except some few unimportant combats with privateers) of which we can find record, which took place from 1793 to 1800, both years inclusive, between British and French or Spanish naval forces, on or near the eastern coast of America, between the latitude of Boston and the northern coast of South America. The reason for so voluminous a list, which, while probably not without omissions, we believe to be sufficiently correct, is that from it alone can any conclusion be drawn as to the amount of the French naval force and its uses during the period in dispute. For convenience to those whose interest or duty it may be to investigate this question we have cited but from one authority, and one which, while not without fault of national prejudice, is carefully and conveniently compiled. Other authorities examined by the court reinforce the conclusions we draw from the citations already made.

Martinique it is alleged was effectively blockaded. This is not affirmatively shown, and perhaps we might rest here, but in this class of cases we have thought it right to go further and to endeavor to throw all the light in our power upon the exact situation.

¹Consult also Life of Decatur, Sparks' series of Biography, 31; Cooper's Naval History United States, Vol. I.

From the citations made and also from the history of the American Navy certain facts clearly appear as worthy of notice.

First, the very small number of encounters between vessels of the English navy and French vessels of war.

Second, that no such encounter took place near Martinique, the two captures of privateers by the *Alexandrian* being the only combats mentioned as occurring in the vicinity of that port after its occupation by the English.

Third, that not a word is said, or an allusion made, in any attainable authority as to a blockade or an attempted blockade (in fact) of any West Indian English port. It does not appear that any armed vessel, English or American, was ordered to, or attempted to, break any such blockade, although the English force was at times very large in the West Indies and was actively engaged. Neither in Cooper's Naval History nor in the Life of Decatur, nor in any other work relating either to the English or American Navy which we have been able to consult, nor in the diplomatic correspondence of the period, do we find any statement tending to show that there existed anything other than a paper blockade, a blockade useless and void in so far as neutral rights were affected.

Further proof of this absence of effective blockade is found in the large number of merchant vessels which safely traded with these ports during the period in question, and in the lack of contention on the part of France, notwithstanding Mr. Pickering's vigorous language (Doc. 102, pp. 408, 410), that they were maintaining or endeavoring to maintain an effective blockade.

We have already seen that the French Government did not desire the fulfillment of the treaty's guaranty clause, deeming it wiser on their own account that we should not embark in the war. Genet and the colonists complained of our course on this subject, but the home government did not agree with them. As late as March, 1798, Talleyrand wrote to Pinckney and his colleagues that "the Republic was hardly constituted when a minister was sent to Philadelphia, whose first act was to declare to the United States that they would not be pressed to execute the defensive clauses of the treaty of alliance, although the circumstance, in the least equivocal manner, exhibited the *casus fœderis*" (4 Wait's Am. State Papers, p. 97). We find no claim by France that the treaty was abrogated by a failure by the United States to fulfill the guaranty clause. During and soon after

1794 the West India Islands fell into the hands of Great Britain, yet in 1795 (January 3) a French decree reciting the law of December, 1794, ordering the treaties of 1778 to be respected as in force, declared, in favor of the United States, the principle of free ships, free goods, except as to ports actually blockaded. As against this position of his superiors, Hugues, in February, 1797, issued his order subjecting to capture and confiscation vessels and cargoes destined to the captured islands, giving as a reason the failure of the guaranty.

The fact, then, that some of the West India Islands had been taken from France does not seem to complicate the legal question.

It is urged that provisions bound for Martinique were properly condemned, on the ground, substantially, that as the port was in possession of an enemy force, it must be assumed they were intended to feed that force, and therefore were contraband by destination. (Citing *The Peterhof*, 5 Wall. 58; 2 Black, 671 and 672, "The Prize Cases"; Desty on Shipping, § 423; Letens Droits. Recip., p. 114; Blatchford's Prize Cases, p. 464.)

As far back as Grotius the distinction was made between things useful only for war, the carriage of which by neutrals is prohibited, things which serve merely for pleasure, the carriage of which is permitted, and things useful both in peace and war, as money or provisions, which are sometimes lawful articles of neutral commerce, and sometimes not, according to the circumstances existing at the time. Thus provisions would be contraband if bound to a besieged camp or port. Kent, who seems to be the most liberal of the writers towards defendants' position, thus lays down the rule:

The modern established rule is, that provisions are not generally contraband, but may become so under circumstances arising out of the particular situation of the war, or the condition of the parties engaged in it. Among the circumstances which tend to preserve provisions from being liable to be treated as contraband, one is that they are the growth of the country which produces them. Another circumstance to which some indulgence is shown by the practice of nations is when the articles are in their native and manufactured state. Thus iron is treated with indulgence, though anchors and other instruments fabricated out of it are directly contraband. Hemp is more favorably considered than cordage; and wheat is not considered as so objectionable a commodity, when going to an enemy's country, as any of the final preparations of it for human use. The most important distinction is, whether the articles were intended for the ordinary use

of life or even for mercantile ships' use, or whether they were going with a highly probable destination to military use. The nature and quality of the port to which the articles are going is not an irrational test. If the port be a general commercial one, it is presumed the articles are going for civil use, though occasionally a ship of war may be constructed in that port. But if the great predominant character of that port, like Brest in France, or Portsmouth in England, be that of a port of military naval equipment it will be presumed that the articles were going for military use, although it is possible that the articles might have been applied to civil consumption. As it is impossible to ascertain positively the final use of an article *incipitis usus*, it is not an injurious rule which deduces the final use from the immediate destination, and the presumption of a hostile use, founded on its destination to a military port, is very much inflamed, if, at the time when the articles were going, a considerable armament was notoriously preparing, to which a supply of those articles would be eminently useful. (Vol. I. p. 139.)

The Supreme Court has decided that provisions the growth of the enemy's country, but the property of a neutral, and carried in a neutral vessel, are good prize because destined to supply the enemy's forces; and the court added that provisions are not generally contraband, but may become so because of their destination or the particular situation of the war. If intended for the ordinary use of life, they are innocent; if intended for the enemy's forces or his ports of warlike equipment, then their seizure is justifiable. (*The Commercen*, 1 Wheaton, 382.)

Bluntschli thinks it against "*gute sitte*" to treat trade in provisions as contraband even if it serves the hostile army's use (*Mod. Völkerrecht*, § 807). Heffter (*Europäisches Völkerrecht*, § 160) holds that belligerents may take measures against the export by neutrals of doubtful articles, articles occasionally contraband, only when a destination for the enemy's Government and military forces can be shown on adequate grounds. Ortolan denies that provisions and objects of prime necessity may be considered contraband, except in cases not pertinent to this discussion (Vol. II, 179). Hautefeuille goes much further and admits as contraband only arms and munitions of war ready for immediate use, fit to be used as such and for no other purpose. (*Droits des Nations Neutres*, II, 419.)

Klüber leans the same way and holds that presumptions are in favor of freedom of trade (§ 288), and Martens states that the law in Eu-

rope prior to the first armed neutrality, 1780, considered as contraband only articles of direct use in war. Vattel sanctions the seizure of provisions "in certain junctures when we have hopes of reducing the enemy by famine" (Liv. III, ch. 7, sec. 112), but Wheaton believes he intended to carry the principle no further than to the case of a besieged city; and, commenting on Grotius, Wheaton reaches the conclusion that the latter sanctions the seizure of provisions, not bound to a port besieged or blockaded, only when made for preservation or defense "under the pressure of that imperious and unequivocal necessity which breaks down the distinctions of property," and this power should not be exercised until all other possible means have been used, then not if the right owner is under a like necessity, and even then restitution shall be made as soon as possible. Bynkershoek and Rutherford concur in this view. (Wheaton, pp. 556 to 558.)

Wheaton expresses no definite opinion for himself, but clearly leans to the side of freedom towards the neutral.

In 1793 (May 7), Mr. Jefferson instructed Mr. Pinckney in relation to a fear expressed by the latter that the belligerent powers might stop our vessels going with grain to enemy ports, that "such a stoppage to an unblockaded port would be so unequivocal an infringement of the neutral rights that we can not conceive it will be attempted." This instruction was followed by another dated September 7, 1793, in which Mr. Jefferson, after stating that in time of war neutrals are free to pursue their ordinary avocations of agriculture, manufacture, and commerce, with the exception of not furnishing to either belligerent "implements merely of war for the annoyance of the other, nor anything whatever to a place blockaded by its enemy," proceeds to define these "implements" as follows:

There does not exist perhaps a nation, in our common hemisphere, which has not made a particular enumeration of them in some or all of their treaties under the name of contraband. It suffices for the present occasion to say that corn, flour, and meal are not of the class of contraband, and consequently remain articles of free commerce. A culture which, like that of the soil, gives employment to such a proportion of mankind, could never be suspended by the whole earth, or interrupted for them, whenever any two nations should think it proper to go to war. . . . If any nation whatever has a right to shut up to our produce all the ports of the earth except her own and those of her friends, she may shut up these also, and so confine us within our own limits. No nation can subscribe to such pretensions; no nation can agree,

at the mere will or interest of another, to have its peaceable industry suspended and its citizens reduced to idleness and want. . . . It is not enough for a nation to say we and our friends will buy your produce. We have a right to answer that it suits us better to sell to their enemies as well as their friends. Our ships do not go to France to return empty. They go to exchange the surplus of one product which we can spare for surpluses of other kinds which they can spare and we want; which they can furnish on better terms and more to our mind than Great Britain or her friends. We have a right to judge for ourselves what market best suits us, and they have none to forbid us the enjoyment of the necessities and comforts which we may obtain from any other independent country.

Mr. Randolph, denying that food can be universally ranked "among military engines," admitted that corn, meal, and flour are so in case of "blockade, siege, or investment." In the late Franco-Chinese war France endeavored to make "rice" contraband, and, referring to this contention, Mr. Kasson, our minister in Berlin, wrote as follows to the Secretary of State:

. . . But more especially I beg your attention to the importance of the principle involved in this declaration, as it concerns our American interests. We are neutrals in European wars. Food constitutes an immense portion of our exports. Every European war produces an increased demand for these supplies from neutral countries. The French doctrine declares them contraband, not only when destined directly for military consumption, but when going in the ordinary course of trade as food for the civil population of the belligerent government. If food can be thus excluded and captured, still more can clothing, the instruments of industry, and all less vital supplies be cut off on the ground that they tend to support the efforts of the belligerent nation. Indeed, the real principle involved goes to this extent, that everything the want of which will increase the distress of the civil population of the belligerent country may be declared contraband of war. The entire trade of neutrals with belligerents may thus be destroyed, irrespective of an effective blockade of ports. War itself would become more fatal to neutral States than to belligerent interests.

The rule of feudal times, the starvation of beleaguered and fortified towns, might be extended to an entire population of an open country. It is a return to barbaric habits of war. It might equally be claimed that all peaceful men of arms-bearing age could be deported, because otherwise they might be added to the military forces of the country.

...

Martinique was neither blockaded nor besieged. It undoubtedly had a British garrison and was a refuge and sometimes a rendezvous for British armed vessels; at the same time it had a large civil population to be fed then, as it is now, largely by the products of the temperate zone. Its predominant character was not that of a port of naval or military equipment.

We do not consider that a provision-laden ship bound for Martinique was properly condemned on the ground alone that she was bound to a British port, nor do we consider the fact that the port had once been French complicates the situation. There is nothing in the law of nations which justifies or makes valid as against neutrals such decrees as those issued during this war by the French and English. Russia admitted these decrees were contrary to the law of nations. France promised to pay for captures made under them. England and Spain did pay the United States. (See authorities cited in *Gray, Adm'r, v. U. S.*, 21 C. Cls. 340.) If either party desired to reduce the other by starvation there was a plain and acknowledged legal method to obtain that end; that is, by the establishment of an effective blockade. That neither was able to take this course, is not a reason that the commerce of neutrals should be suspended on the penalty of having their merchant vessels and cargoes confiscated. To admit such a doctrine would be to impose in time of war a worse burden upon the neutral than that borne by either belligerent, and would shut it up in its own ports, or oblige it to furnish, in protection of its commerce, a naval force competent to compete with the belligerent, which by paper decrees unsupported by effective acts, by its municipal law attempts to interfere with the recognized and natural rights of neutral trade.

We do not understand that in the negotiations of 1800 the French denied the justice of claims similar in principle to the one now suggested, and the treaty of 1778 in terms conceded the right to trade with the enemy. The commerce of the United States was principally in agricultural products, certainly not in munitions of war. A most important complaint was as to that part of the belligerent decrees which directed seizure of neutral property on the sole ground of destination to an enemy port without regard to the character of the cargo. (See Treaty Commerce 1778, Articles XII, XIII, XXIII, XXIV.)

It seems to us clear that this class of claims was contemplated by the treaty of 1800 and the act of 1885.

The burden of proof in prize proceedings is on the seized vessel. The authorities concur in this general statement, but the principle is not technical and is not to be pushed beyond its proper natural intent. Seized vessels always appear before the court under the taint of suspicion; that taint it is incumbent upon them to remove, as it is in their power alone to do so. What the court looks for is the fact. If it appear that the vessel was innocently pursuing an honest and legal voyage, whether that appear by papers or otherwise, then the vessel should be released. No particular papers, no specified character of evidence is marked out and defined as indispensable to attain this end. A case is easily supposable in which a merchant vessel has lost its papers by an accident, or by theft, or by robbery committed by a pirate or privateer, or through suppression by the captor, and it would not be admitted—the fact of their non-production being explained, and the vessel's honest character being shown—that because some particular document was not on board she therefore should be condemned and confiscated. The *onus probandi* is on the captured vessel; which means no more than that she must explain away suspicious circumstances.

The learned counsel for the defense contend that the United States first violated the treaties of 1778 by the proclamation of neutrality of 1793, by refusing to guarantee the French possessions, by refusing to grant the promised harbor privileges, and by concluding the Jay treaty. Therefore "it was the right of France to retaliate upon the United States for these violations; and whatever she did, or whatever was done by her authority in such retaliation prior to and during the limited war existing between the two countries, whether by captures, seizures, condemnations, or confiscations of American property, vessels or cargoes, was justifiably done."

In another form substantially the same contention is made, defendants claiming that the acts of France complained of by the United States were authorized by the law of nations; that whether reparation was to be made by France depended upon compliance with her demands; that as the United States did not acquiesce in those demands, but by the annulling act of July, 1798, practically notified France that they would not do so, "from that moment France owed no compensation for those confiscations and the matter was *res judicata*."

In considering these propositions it will strike any one who has studied the correspondence or will refer to the extracts made from

it by us in this and our previous opinions on the spoliations question, that France never took this point. It will be remembered that the decrees at the outset were admitted by all parties to be illegal, and excusable only on the ground of necessity; that while this admission was not by any means consistently adhered to, still England and Spain came back to it in effect when they compensated the United States for losses—England through a commission organized under the provision of the Jay treaty, Spain in the treaties relative to the Florida purchase.

France did not seriously ask us to enforce the guaranty and apparently did not wish us to do so, however much we may have feared such a demand on her part, and however much some of her agents and her colonists may have desired it. The vital point of difference was the Jay treaty. We have already discussed that instrument and stated that it was in conflict with the provisions in the Franco-American treaties of 1778. France did not contend that the Jay treaty abrogated the treaties of 1778; on the contrary, her whole argument, down to the ratification of the treaty of 1800, was based upon the premise that these treaties were of enduring force. The decree itself which ordered seizure of neutral property bound in United States vessels to enemy ports, set forth as a reason for its enactment that the Jay treaty modified, not annulled, the treaties with France, and that France was entitled under the treaties to any benefit this modification might give her.

France did not deny at any point of the negotiations which led to the treaty of 1800 her liability for claims known by the generic name of "spoliations," but claimed in return for payment recognition of treaties, a demand which was not granted, and the contention remained embodied in the second article, which was stricken out. Thus was completed what Madison called the "bargain" by which we released "spoliations" in consideration of release from all obligations founded upon the treaties of 1778. A striking illustration of the French position, if any is needed after the detailed statement of the negotiations which has heretofore been made, is found in Article IV of the treaty of 1800, which agrees to return prizes captured under the decrees, now termed by the defense decrees of retaliation, when those prizes had not been already definitively condemned.

Acts of retaliation are admitted to be justifiable under certain circumstances. They may exist when the two nations are otherwise at

peace, but they are in their nature acts of warfare. They depart from the field of negotiation into that of force, and, as is war, are justified by a successful result. To term the decrees of France and the acts of their privateers under them "acts of reprisal" does not alter the facts or the legal position. That position has been defined by the Supreme Court of the United States as limited partial war. We, following the path indicated by that tribunal, have defined it as "limited war in its nature similar to a prolonged series of reprisals." The result of that partial limited war, the result of the negotiations for settlement, the agreement reached by the two parties which made the Government of the United States liable over to its citizens, we have heretofore considered so much in detail that we shall not now repeat it, and we need only state briefly the result heretofore reached by us, and in which we, after reexamination, are confirmed, that the acts of France, now in question, whether called "reprisals" or acts of limited warfare, were contended by the United States to be illegal, were admitted so to be by France; that France stood ready to make the compensation made by England and Spain for similar acts on their part, provided we would admit certain claims of her own, which we declined to do; and finally, by the substitution of the existing second article of the treaty for that agreed upon by the negotiators, these claims were surrendered in consideration of a release from the French demand.

The case of the *Two Brothers* presents a claim for salvage paid an American man-of-war for rescue from a French privateer.

The broad principle of prize law forbids an allowance by way of salvage to the captor of a neutral in possession of a belligerent. The reason of the rule is plain: salvage is remuneration for aid in case of danger, and a neutral vessel in the hands of a civilized belligerent is not in danger, for it is to be presumed that, if innocent, she will be discharged by the prize-court with damages for detention. Some of the prize-courts in France were at certain times during the disturbed period between 1792 and 1801 very fair and just in their treatment of neutral property. We have in our opinions on the spoliations cited instances of a reasonable judicial application of the law. Unfortunately, however, the fair administration of justice, which before the Revolution and since has characterized the learned and able officials who have there filled the offices of the magistrature, was interrupted during the period now under consideration. Setting aside the charges made of ulterior and improper motives on the part of individual magis-

trates of which illustrations are found in the letters of Monroe, Mount-florence, and Pickering (*supra*), we need only to recall that the decrees of the French or colonial governments were binding upon the prize tribunals, and those tribunals were obliged to enforce them. Many of the decrees were in conflict with the law of nations and were an invasion of the rights of neutrals. The position assumed by the French authorities placed neutrals prosecuting innocent voyages in a most dangerous position. If taken by a French privateer they were not to expect a trial under the recognized law of nations, but a trial under arbitrary and illegal municipal enactments; a trial which would necessarily result in condemnation, even if the local tribunal were above suspicion of improper prejudice.

Under these circumstances the reason fails for the rule as to salvage in case of recapture of a neutral from a belligerent. As the neutral was in danger of condemnation, so the recapturing vessel was entitled to salvage. We have already cited the opinion of Lord Stowell, who, at the time of the occurrences from which these claims arose, found it just and necessary to adopt this rule.

The Supreme Court of the United States have declared that to support a demand for salvage two circumstances must concur—the taking must be lawful, and there must be a meritorious service rendered to the recaptured. Commenting on Lord Stowell's opinion as to the necessity for meritorious service, the court say:

The principle is that without benefit salvage is not payable; and it is merely a consequence from this principle which exempts recaptured neutrals from its payment. But let a nation change its laws and its practice on this subject; let its legislation be such as to subject to condemnation all neutrals captured by its cruisers, and who will say that no benefit is conferred by a recapture. In such a course of things the state of the neutral is completely changed. So far from being safe, he is in as much danger of condemnation as if captured by his own declared enemy. A series of decisions, then, and of rules founded on his supposed safety, no longer apply. Only those rules are applicable which regulate a situation of actual danger. This is not as it has been termed, a change of principle, but a preservation of principle by a practical application of it according to the original substantial good sense of the rule.

The court then inquire whether the laws of France were such as to have rendered the condemnation of a neutral in possession of a French

prize crew so probable as to create a case of such real danger that her recapture must be considered as a meritorious service authorizing allowance as salvage. On this point the conclusion is reached that the danger of loss was real and imminent.

The captured vessel was of such description that the law by which she was to be tried condemned her as good prize to the captor. Her danger then was real and imminent. The service rendered her was an essential service, and the court is therefore of opinion that the recaptor is entitled to salvage. (*Talbot v. Seeman*, case of the *Amelia*, 1 Cr. 1.)

We see no reason why a rule laid down by such eminent authority, so just in principle, and the result of such sound judicial reasoning, should not be applied to the cases now before us.

The *Nancy* was under charter to sail from Baltimore to Jamaica, there to discharge cargo, reload, and return to Baltimore. While on her way to Jamaica under this charter-party she was seized on the high seas by a French privateer and lost to her owners. The question is now presented as to the basis upon which an allowance for freight should be computed.

It is evident that freight earned is an element of value in the property lost. The ship-owner has a right to expect a reasonable return upon his venture, and this return he finds only in the freight money. As between the vessel and the cargo-owner the freight is regarded as an entirety due in no part until the arrival of the vessel at the port of destination. Between these two alone does this rule prevail—as to them the law has placed a certain construction upon the contract of affreightment to which they are parties—a construction well understood, admitted, and certain. As to third parties no such rule prevails, and as against them freight is often recoverable, even when the vessel does not reach her destination. In cases of tort, such as collision, Dr. Lushington says: “The party who had suffered the injury is clearly entitled to an adequate compensation for any loss he may sustain for the detention of the vessel during the period which is necessary for the completion of the repairs, and furnishing the new articles (2 W. Robinson, 279), and he allowed gross freight, less the ordinary ship’s expenses necessary to earn it. As a broad rule this is well enough, but it is not without possible exception, for we may imagine an injury at a time when the vessel is not engaged in freight

earning, although even then we probably look to the market for a proper measure of damages.

The case of *The Amiable Nancy* (3 Wheaton, 560), and *Smith v. Condry* (1 How. 35), allowed only the "actual damage sustained by the party at the time and place of injury" without allowance for detention. In *Williamson v. Barrett* (13 Howard, 101), a collision case, the court allowed damages for demurrage, adopting the rate of freight, less expenses, as a proper measure, three justices dissenting on the ground that the majority rule introduced too much uncertainty into the case and tended to increase the "stringency, tediousness, and charges of litigation in collision cases." They therefore preferred a rule granting full damages at the time and place of collision, with legal interest on the amount thus ascertained.

The case of the *Baltimore*, arising from collision, was decided in 1869 (8 Wall. 377), the court holding that the suffering party is not limited to compensation for the immediate effects of the injury inflicted, but the claim for compensation may extend to loss of freight, necessary expense incurred in making repairs, and unavoidable detention. *Restitutio in integrum* is the leading maxim in such cases, say the court, and in respect to materials for repairs where repairs are practicable there shall not, as in insurance cases, be any deduction for new materials in place of old, for this reason that "the claim of the injured party arises by reason of the wrongful act of the party by whom the damage was occasioned, and the measure of the indemnity is not limited by any contract, but is coextensive with the amount of damage. . . . Allowance for freight is made in such a case reckoning the gross freight less the charges which would necessarily have been incurred in earning the same, and which were saved to the owner by the accident, together with interest on the same from the date of the probable termination of the voyage."

In case of capture the general rule is that the neutral carrier of enemy's property is entitled to his freight (Story, J., in *The Commercen*, 1 Gallison, 264). Sir William Scott held very firmly by this rule in the case of *Der Mohr* (3 C. Rob. 129, and 4 C. Rob. 315), a case of great hardship, appealing strongly to the sympathy of the court. In that case, he said:

In an unfortunate case like the present, the court would certainly be disposed to give the captor all possible relief. I need not add that no relief is possible which can not be given consist-

ently with the justice due to the claimant. The demand of freight is, I apprehend, an absolute demand, in cases where the ship is pronounced to be innocently employed. . . . The freight is as much a part of the loss as the ship, for he (the captor) was bound to answer equally for both. The captor has, by taking possession of the whole cargo, deprived the claimant of the fund to which his security was fixed. He was bound to bring in that cargo subject to the demand for freight. He was just as answerable for the freight of the voyage as for the ship which was to earn it, or which was rather to be considered as having already earned it. In the room of this fund the captor has substituted his own personal responsibility, for loss accrues by the fault of his agent. I see no distinction under which I can pronounce that the claimant is not as much entitled to the freight as to the vessel. (See also 1 Gallison, 274, the *Anna Green*.)

Upon an open insurance policy gross freight is recoverable (2 Phillips, Ins., § 1238). As to insurance, the inchoate right to freight vests directly "the ship has broken ground on the voyage described in the charter-party," and there is an insurable interest "where there is an expectancy coupled with a present existing title" (*Lucena v. Crauford*, 2 Bos. and Pull. N. R. 269; 1 Phillips, Ins., § 334, p. 192.)

Freight, then, is property insurable and collectible. It has value although the right as against the freighter may be inchoate until delivery. As to the freighter the ship-owner is without redress, unless there be delivery in accordance with the contract, but as to an insurer or a tort-feasor, there is a right to redress upon the happening of an interruption of the voyage. The amount of that redress and the method of computing it in the cases now submitted to us of illegal capture are now to be decided. The ship-owner has a right to a reasonable return upon his investment, for the risk to which his property is subjected, for its depreciation while engaged in the undertaking, and for the expenses to which he is subjected in carrying it out. The measure of that return, based upon the theory of a completed voyage, he has himself fixed in his contract of affreightment. If his voyage be not completed, but be interrupted and his property lost by the act of a wrong-doer, then, as against that wrong-doer, the maxim *restitutio in integrum* applies. If the voyage were completed the difficulty would not be serious, for as a guide we should have a contract made by parties opposed in interest and familiar with the business. As the voyage has not been completed, an allowance of gross freight would be more than a *restitutio in integrum*, and would neglect a deduction

for expenses necessarily to be incurred in completing the contract and in conveying the cargo to the point of delivery. To allow gross freight under these circumstances would in effect not merely reimburse the owner, but render the seizure a matter of profit to him, and we do not understand that punitive damages should be recovered in the cases now before us. The vessel having been destroyed before the completion of the voyage, has not been so long employed as the contract contemplated, her crew have received less wages, and her hull and outfit have received less deterioration. She has only earned freight *pro tanto*. On the other hand, the expenses of freight earning are much greater at the beginning of the voyage than at any other period, for then advances are made seamen, stores are shipped, port charges and the cost of loading have to be met. Therefore, to divide the total freight by the number of days out of port would not be fair to the ship-owner; to deduct from the total freight the cost of the voyage from the place of destruction to port of destination would be a fairer rule, could those expenses be ascertained.

To compute the amount of this freight in each instance is practically impossible, so that the court is forced to the adoption of some general rule which in our opinion is fair in result. The difficulty is not a novel one, and the method of solution not without precedent. Those familiar with the proceedings of prize courts know that a substantially arbitrary rule is there often adopted in practice to enforce justice, and now, nearly a hundred years after the events from which these claims arise, when all witnesses are dead and many records destroyed, we are forced to this course, as it is evidently impossible to estimate in every instance precisely the proportion of freight earned. Where such an estimate can be made we shall make it, in other cases we shall adopt a general rule.

In seeking for such a rule, we learn that in commercial cities, in the adjustment of average losses, there is a practice to award arbitrarily two-thirds of the full freight on the immediate voyage. This course was in effect followed by the commissioners under the treaty of 1831 with France, who made a similar allowance as a fair measure of the increase in value of the cargo by reason of the distance to which it had been transported at the time of capture; and the award was made to the shipper if he had paid freight; to the ship-owner if the freight had not been paid.

After carefully examining the cases before us we conclude that this rule is substantially just, and we adopt it.

This brings us to another point. The *Nancy* was under charter for a round voyage—Baltimore to Jamaica and return. She was destroyed on the outward voyage. Is she entitled to an allowance for freight based upon the entire contract contained in the charter-party?

As against an insurer or tort-feasor the inchoate right to freight vests when the vessel breaks ground "on the voyage described in the charter-party" (*supra*). An insurable interest in freight can not spring from a mere "expectancy," but may spring from an "expectancy" when this is coupled with "a present existing title." (*Lucena v. Crawford, supra.*)

In cases of general average for jettison, Lowndes states the rule to be that "when a ship is chartered to fetch or carry a cargo belonging to the charterer, the freight under the charter must contribute to the general average, whether or not the cargo is on board the ship at the time of the general average act, since the loss of the chartered ship, whether laden or not, would deprive the ship-owner of his expected freight." (Lowndes on General Average, 236.)

It has been held in this country that where a gross sum was to be paid as freight for a voyage out and return, the principal object of the voyage being to obtain a return cargo, the freight for the whole trip must contribute to general average on the outward voyage. (*The Mary*, 1 Sprague's Decisions, 17.) The same rule has been adopted in cases of salvage. (*The Nathaniel Hooper*, 3 Sumner, 542; *The Progress*, Edwards, 210; *The Dorothy Foster*, 6 C. Rob. 88; see also *Livingston v. Columbia Insurance Company*, 3 Johns, N. Y. 49; *Hart v. Delaware Insurance Company*, 2 Wash. C. C. 346.)

The decisions on this question in the United States do not go so far as those in England, but we lean to the doctrine of Sir William Scott and Dr. Lushington, as better applicable to the cases now before us, that when a vessel is actually under contract for a voyage from one port to another, thence to proceed to a third, she has such "a present existing title" in the freight money of the entire voyage as to authorize a recovery based upon the total freight money for the round trip.

Of course she is not entitled to gross freight, and we must not be understood as intending any application of this principle to a vessel proceeding under a mere "expectancy" of finding cargo at her first port of call. The principle only covers those cases where there is an assurance of freight from her first port of call to her second, and a price stipulated to be paid therefor.

We have discussed and ruled upon as many of the general questions submitted in the argument as it seems to us wise now to decide, either for counsels' convenience or in justice to the Government or the claimants. Other points which have arisen in the long argument we shall consider as they are brought before us in specific cases. The object of obtaining from the court a ruling upon general principles is in our opinion now sufficiently attained.

We file herewith, that they may be reported to Congress, our conclusions of fact and law in many cases. This opinion, with those already delivered, contain the conclusions which in our judgment affect the liability of the United States therefor.

THE SHIP *CONCORD*¹ [AND OTHER CASES]

[French Spoliations 1589, 490, 507, 1587, 2556, 5361, 4037, 600. Decided April 30, 1900]

On the Proofs

The ship *Concord*, on a voyage from Canton to Philadelphia, is seized February 6, 1799, by a French privateer and carried into the Isle of France, where the vessel and cargo are "confiscated" on the ground that the Governor-General of the Isle of France has proclaimed that "*France and the United States are in a state of hostilities from the month of July, 1798, and that tribunals are required to decree the confiscation of all American vessels brought into this port with the cargoes on board.*"

- I. At various times between 1793 and 1800 there was much that looked like war between France and the United States, but the United States never ceased to hold France pecuniarily responsible for the acts of her cruisers and privateers, and France never denied her responsibility for unjustifiable seizures and condemnations. A defense which France could not now set up the United States can not. Where France claimed no exemption the United States can claim none for her, and where they can claim none for her they can set up none for themselves. Liability is determined by the liability of France.
- II. Between 1793 and 1800 the assertion in French courts of belligerent rights was in remote places. The tribunals in the immediate presence of the French Government held of the *Act of July 9, 1798* ((Stat. L. 578), that "*it does not belong to the tribunals to take notice of any step that a foreign power may take as constituting a state of war between France and itself.*"

¹Court of Claims Reports, vol. 35, page 432.

- III. Under the French spoliation act an indebtedness on the part of original claimants to the United States is not strictly a set-off, as no judgment can be rendered in these cases; but it is an equity which Congress may well consider, inasmuch as the relief to be afforded is a matter of conscience and equity.¹

Norr, Ch. J., delivered the opinion of the court:

On the 28th of November, 1798, the American ship *Concord* sailed from Canton bound for Philadelphia.

On the 6th of February, 1799, she was stopped on the high seas by the French frigate *La Prudente*. The captain of the frigate found nothing in the ship's papers to justify detention, and accordingly allowed her to proceed. But upon further reflection, after an interval of several hours, he reconsidered his determination and resolved to take the responsibility of seizing the *Concord* and of sending her in to the Isle of France for a further examination by the authorities.

The story of her seizure is best told by her captain in his protest:

She proved to be the French frigate or corsair *La Prudente*, Cap. Joliff, from the Isle of France, on a cruise, who, after strictly examining my ship's papers, bills of lading, etc., ordered his interpreter to inform me it was not in his power to detain me, as my papers showed the ship and cargo to be neutral property; at same time returned me my papers with orders to proceed on my voyage. Accordingly I returned on board the *Concord*; at 2 p.m. made sail on our course, the frigate doing the same, but standing about two points more north; at half past 3 p.m. hoisted colors on board the frigate; we hoisted ours also; the frigate came up; the captain ordered us to heave to until he sent his boat on board, which came with three officers, and orders for me or the supercargo to repair on board the *Prudente*, with all letters, papers, invoices, etc., relating to ship or cargo. Accordingly Mr. Dobell, supercargo of the *Concord*, took the papers and went on board the frigate. Soon after the boat returned for Mr. Dobell's desk and small box, containing sundry orders, invoices, etc., respecting the outward cargo. The 2d officer and 2d boy were also taken on board with Mr. Dobell, and all detained during the night. At 8 p.m. the frigate hailed and ordered the

¹Pages 433 to 441 of this case are omitted, as being merely lists of claimants and amounts claimed. They contain nothing of importance for the purposes of this pamphlet.

officers to make sail after her, and steer W. b. N. during the night. At 6 a.m. the frigate's boat came for me. I went on board. The captain demanded my former bills of lading for outward cargo, for which I went on board the *Concord* and returned again on board the frigate. After a long and tedious examination of all trivial papers the captain determined to send us to the Isle of France. At 4 p.m. on the eighth began to shift crews. Cap. Joliff took my chief mate, seventeen of the *Concord's* crew on board the frigate, sent some Frenchmen on board, sealed up all the *Concord's* papers, and dispatched us with prize master for the Isle of France, where we arrived on the 10th day of March, as aforesaid.

On a subsequent day the prize court in the Isle of France rendered a decree "confiscating" the ship and cargo. The decree recites that the ship *Concord* sailed under the American flag and an American passport; that the captain, officers, and crew were all subjects of that nation, and that her cargo belonged to American subjects residing in Philadelphia. In other words, the *Concord* was one of the very few of the American vessels whose conduct, ownership, and the character of whose cargo were, in the opinion of French tribunals, each and all absolutely unexceptionable.

Nevertheless, the tribunal pronounced a decree of confiscation (not condemnation) upon the sole ground that the Governor-General of the Isle of France had on the 23d day of June, 1799, published a proclamation declaring that France and the United States were and had been in a state of hostility from the 9th day of July, 1798, and requiring all tribunals to confiscate all American vessels which had been or should be brought into French ports, with the cargoes on board.

The distinction between "confiscated" and "condemned" rested on certain French decrees. If a vessel was sailing under a neutral flag, she or her cargo might be condemned for cause; if she were an enemy, she and her cargo would thereby be liable to confiscation.

It is apparent that some unfortunate American vessel whose master carried a commission under the *Act of July 9, 1798* (1 Stat. L. 578), had fallen into the hands of the French governor, and that he had thereupon, without instructions from his own Government, proclaimed war as existing between the two countries. It is a general principle that while a nation is enjoying the advantages of peace she must be held to the obligations of peace and be responsible, among other things, for the acts of her officers and agents, but that when

war comes and those responsibilities cease, she, while encountering the pains and penalties of war, may exercise the belligerent right of capture. At various times between 1793 and 1800 there was much which looked like war between the two countries. But notwithstanding the act of the 9th of July, 1798, and the decision of the Supreme Court in *Bas v. Tingy* (4 Dall. 37), and the historic battle of the *Constellation* with *La Vengeance*, wherein each ship nearly destroyed the other and the French frigate came into Curaçao dismasted and sinking, with 50 killed and 110 wounded, it has been held, and it must be held again, that no war existed which released France from her international responsibilities, or which authorized her to destroy American commerce. The question has been exhaustively argued and exhaustively examined, and all the information and learning which it is susceptible of receiving will be found embodied in the opinions in the cases of *Gray* (21 C. Cls. 340), *Cushing* (22 *id.* 1), and the *John* (22 *id.* 408). In a few words it may be said that the United States never ceased to hold France pecuniarily responsible for the acts of her cruisers and privateers, and that France never denied her liability for unjustifiable seizures and condemnations. Moreover, France never interposed the defense of belligerent rights, but, on the contrary, again and again reiterated her willingness to discharge her treaty and international obligations whenever the United States would discharge theirs. A defense which France could not now and did not then set up, the United States can not set up. Where France claimed no exemption the United States can claim none for her; where they can claim no exemption for France, they can set up none for themselves. The question of liability to be determined is the liability of France..

Another fact to be considered is that this warfare, such as it was, existed only in what were then remote parts of the earth, the West India Islands, the Straits of Sunda, the Chinese Seas, etc. At the time when the governor of the Isle of France was proclaiming war and confiscating American vessels for no fault of their own, the Tribunal of Commerce in Bayonne, in the immediate presence of the French Government, was proceeding upon the basis of peace, and administering justice according to the accepted principles of international law, except, of course, where those principles were varied by French decrees. Thus in the case of the ship *Victory*, Hatton, master (not reported), captured October 6, 1799, while on her voyage from

Norfolk to London, the tribunal held that some of the property on board, being English, was subject to capture; that, inasmuch as the captors "could not, while at sea, take out the goods which were enemy's property found on the ship, they were authorized to bring the ship into a port for its discharge"; that hence there was no reason for decreeing damages to the American ship. But the court then decrees "the surrender of Captain Hatton of the said ship *Victory* with her rigging, apparel, appurtenances, and dependencies, to be restored to him in the condition she was at the time of the seizure; also that like surrender shall be made to him of the papers and documents relative to said ship, and, finally, the surrender of the portions of the goods which were not British property." And the court then proceeds to decree the condemnation of the English property found on the ship, with the proviso "that they, the captors, pay the freight thereon to the said Captain Hatton, stipulated and borne in the bills of lading, which will be reduced to French money according to French exchange on Hamburg and that of Hamburg on London by persons skilled and upon whom the parties shall agree or, in default of agreeing, by persons named by the court."

This certainly was all that any neutral could ask.

Again, and at about the same time, in the case of the ship *Fame*, Rust, master, the same tribunal considered the very point now under consideration, and its decision was all that this Government could demand:

Considering the point relative to the letter of marque of which the ship was the bearer. That the French Government without doubt is not ignorant of the delivery of like letters by the Government of the United States to the vessels of the said United States nor of the terms in which these letters are conceived. That now and up to the present time it has not been manifested that it regarded this circumstance and the act of Congress of the United States of the month of July, 1798, either as a declaration of war or as hostilities against France, since it has not asked of the legislative body a law declaring the French nation to be in a state of war with the United States of North America. That a state of war can not be established or declared without a law of the legislative body. That it does not belong to the tribunals to take notice of any step that a foreign power may take as constituting a state of war between France and itself.

That the condemnation demanded of the said ship *Fame* and of her cargo, because of the said letter of marque, can not be

founded upon any law, and can not and ought not to be pronounced. The said ship besides, not having opposed any resistance, suffered itself to be visited at the summons which was made to it by the said privateer. There is, then, no occasion to accede to the demand of the captors upon this point.

This case was appealed to the civil tribunal of the department, and thence to the Council of Prizes, which latter tribunal, on the 13th December, 1800, released the vessel and cargo, in accordance with the judgment of the two lower tribunals. (Schooner *John*, Blackler, master, 22 C. Cls. 408.)

The counsel for the United States has argued with great ingenuity and learning that these decrees were rendered at the time when the treaty of September 30, 1800, was a matter of negotiation; that the French Government then desired to retain America as a friend and not to drive her over to the enemies of France, who then numbered nearly all of the sovereignties of Europe; and that France in effect waived her legal and maritime rights so that she might smooth the way to an adjustment of all differences with the American Government. This might be so held if it were a defense which the United States could properly set up—if the question of liability were not always the question, "What was the liability of France before the claims were relinquished to her?" It seems undeniable that if this court were an international tribunal and France were an actual defendant in court, no one would think it possible for her to say today what she did not say through her own tribunals just one hundred years ago, when the matter was in litigation and the rights of the American owners a matter of contemporaneous adjudication. Accordingly it must be held now, as it has been held before, that there was no war which accorded to France general belligerent rights or which subjected an American vessel to capture and condemnation if she were at the time without fault.

It is to be noted in this case that the *Concord* was not subject to condemnation or confiscation because of any act or paper of her own. She did not resist search; she did not attempt flight; no objection was raised by the French tribunal to any want of papers or to the character of any paper which she carried. The decree narrates that she had an American passport; but commissions under the act of July 9, 1798, were generally styled by the French tribunals letters of marque. She does not appear to have had any armament whatever,

and her crew, as far as appears, consisted of only 18 men. The question, therefore, whether the carrying of a commission under the act of July 9, 1798, was evidence of aggressive intent which would render her liable to capture and condemnation is not presented by the evidence in this case.

The counsel for the Government has filed a motion to reopen some of the cases against this vessel so as to enable the defendants to plead an indebtedness on the part of the original claimants to the United States. Such a cross demand is not strictly a set-off, inasmuch as the court does not render judgments in these cases, but nevertheless it is an equity which Congress may properly consider in cases where the relief to be afforded by Congress is a matter of conscience and equity. (Ship *Parkman*, present term.)

All of these motions, with one exception, have been withdrawn or abandoned.

In the case of Peter Blight, No. 1589, it is found that \$1,752.32 became due to the United States on a custom-house bond, and there is no evidence to establish payment. Whether this apparent indebtedness of Peter Blight, the original claimant, should be deducted from the award in favor of his administrator is a question resting exclusively in the discretion of Congress, and in regard to it the court reports no conclusion and expresses no opinion.

The order of the court is that the findings and conclusions now filed be reported to Congress, together with a copy of this opinion.

THE SHIP *ROSE*¹ [AND OTHER CASES]

[French Spoliations, 120, 422, 1056, 2720, 2842, 4318, 3875, 4484, 4320, 4351. Decided April 22, 1901]

On the Proofs

The American ship *Rose* resists search, in an action lasting 2½ hours, in which she loses 3 killed and 14 wounded, and the French privateer 25 killed and 21 wounded.

- I. Grave apprehension of illegal condemnation will not justify a neutral vessel in resisting the right of search by a belligerent.
- II. Forcible resistance is good ground for condemnation, except in cases where a neutral is justified in defending against extreme violence threatened by a cruiser grossly abusing his commission.

¹Court of Claims Reports, vol. 36, page 290.

- III. The *Act of June 25, 1798* (1 Stat. L. 522), authorizing American merchant vessels to defend against French depredations, could not change the law of nations or impose a new international obligation upon France.
- IV. The French spoliation act refers to municipal and international law and to treaties. The court must apply each only where it is properly applicable.
- V. Where no wrong was done according to international law or treaty stipulations, a case did not come within the terms of the treaty of 1800 (Art. II), and no liability was assumed by the United States.
- VI. The jurisdictional act contemplates this court as sitting in the character of an international tribunal to determine the diplomatic rights of the United States against France.

The Reporters' statement of the case:

The following are the facts of this case as found by the court:

I. The ship *Rose*, William Chase, master, sailed on a commercial voyage from Newburyport, Mass., on the 20th of March, 1799, bound for Surinam, and from thence sailed on the 23d day of July, 1799, bound home for Newburyport.

While pursuing said voyage she was captured on the high seas, on the 31st day of July, 1799, by the French cruiser *Conquest of Egypt*, mounting 14 guns and 120 men, after an action of two hours and a half, in which the master of the *Rose* lost his mate and 2 men killed and 14 wounded, and the Frenchman had 25 killed and 21 wounded, after which the *Rose* was carried into Guadeloupe, where, on the 18th Thermidor, year 7 (August 6, 1799), said vessel and her cargo were condemned by the tribunal of commerce sitting at Basse-Terre, Guadeloupe, under the following decree:

Judgment and condemnation of the American ship *Rose*, Capt. W. Chase, captured by the privateer *Egypt Conquered*.

18 Thermidor, 7th year. Extract from the rolls of the royal court of Guadeloupe and its dependencies.

In the name of the French people.

The court of commerce and prizes, established on the isle of Guadeloupe, sitting at the Basse-Terre of the said isle, at its usual session, on the 18th of the month Thermidor and the 7th year of the French Republic, which is one and indivisible.

Preamble. In view of information communicated the 14th and 15th of the present month, Thermidor, by the justice of peace stationed at Liberty Port, which information relates to the cap-

ture of the American ship *Rose*, of Newburyport, Capt. William Chase, by the privateer called *Egypt Conquered*, Capt. Lyklama. The examination of the papers of the said ship by citizen Magne, sworn interpreter of the English language, at Liberty Port, which papers, as well as the translation of them, have been lodged in the office. The associate sworn interpreter of the English language in this city and citizen Minard being present at the reading of them. In view of these documents, the president in his report and the overseer of the directory in his suit present the following as the result of their deliberations:

Considering (according to the above-mentioned documents and information) that it is evident that the captain of the said ship has neither knowledge nor invoice of his cargo taken at Surinam, which circumstance makes it impossible to know the real owner of the said cargo.

Considering that his shipping paper (*rôle d'équipage*) is not such as is prescribed by the model annexed to the treaty of the 6th February, 1778.

Considering, finally, that the said captain was bearer of a commission from the President of the United States, which authorized him to capture French armed vessels and to carry them into any port of the United States; a commission in virtue of which the captain of the said vessel not only did not obey the summons of the French privateer, but attacked it and defended himself till he was subdued by force of arms. In view of these facts we shall refer to the following articles in justification of our proceedings:

In the first place the 3d article of the judgment of the Executive Directory reminds all French citizens that the treaty, passed the 6th February, '78, has been, according to the terms of its 12th article, legally modified by that passed at London the 19th November, 1794, between the United States of America and England. Consequently, there is substituted for it the 17th article of the treaty of London, dated 19th November, 1794, which reads as follows: All enemies' merchandise, or that which is not satisfactorily proved neutral, and which is shipped under American colors, shall be confiscated, but the vessel on board of which it shall have been found shall be set at liberty and returned to the owner. In the second place, the 4th article of the same judgment is expressed in these terms: "In conformity with the law of the 14th February, 1793, the rules and regulations adopted the 21st October, 1744, and the 26th July, 1778, respecting the mode of proving the ownership of vessels and neutral merchandise, shall be executed according to their form and tenor. Consequently every American ship shall be declared a prize which shall not have on board a shipping paper in good form, such as is

prescribed by the model annexed to the treaty of the 6th February, 1778, and the execution of which is ordered by the 25th and 27th articles of the same treaty. In the third place, the 12th article of the ninth record of prizes, contained in the statutes of the month of August, 1681, runs thus: Every vessel which shall refuse to strike its colours after the summons made by our vessels to those of our subjects armed for war shall be obliged to do it by means of artillery or otherwise, and in case of resistance and contest shall be declared a prize. The court authorizing the suit of the Executive Directory declares a prize the said American ship *Rose*, her apparel and cargo, and orders the sale of them, in the customary forms, for the benefit of the captors, and those who armed and were interested in the privateer *Egypt Conquered*, an inventory being previously made of the whole, in presence of the constituted authorities. Made and executed at the court in its said sitting, at which were present citizens Anthony John Bonnet, president; Anthony Cloder and Gabriel Capoul, judges, and Lewis Christopher Blin Herminier, registers, the said day, month, and year.

Signed at the registry.

BONNET, *President*, and
BLIN HERMINIER, *Register*.

II. The ship *Rose* was a duly registered vessel of the United States, of 250 36/95 tons burthen, was built at Amesbury, Mass., in the year 1797, and was owned by William Bartlett, a citizen of the United States.

III. The cargo of the *Rose* consisted of coffee, cotton, cocoa, and sugar, and was principally owned by William Bartlett, the owner of the vessel. William Chase and Edmund Bartlett, citizens of the United States, owned small portions of the cargo, and Samuel Hopkinson, Enoch Hale, Jr., Smith Adams, and Abel Hale had adventures on board said vessel.

IV. The losses by reason of the capture and condemnation of the *Rose*, so far as claims have been filed in this court, were as follows:

The value of the vessel.....	\$10,640.00
The freight earnings for the voyage.....	4,173.00
The value of the cargo owned by William Bartlett.....	66,336.98
The value of the cargo owned by William Chase.....	4,959.54
The value of the cargo owned by Edmund Bartlett.....	3,820.00
The premium of insurance paid by Edmund Bartlett.....	200.00

Amounting in all to.....\$90,129.52

SPECIAL FINDINGS RELATING TO THE SEVERAL CASES

V. Case No. 120. William Bartlett was the sole owner of the vessel and a part of the cargo, upon which it does not appear that there was any insurance.

His losses were as follows:

The value of the vessel.....	\$10,640.00
The freight earnings for the voyage.....	4,173.00
The value of the cargo owned by him.....	66,336.98
	<hr/>
Amounting in all to.....	\$81,149.98

VI. Case No. 1056. William Chase was the owner of a portion of the cargo, upon which there does not appear to have been any insurance.

His loss was as follows:

The value of his portion of the cargo.....	\$4,959.54
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VII. Case No. 2720. Edmund Bartlett was the owner of a part of the cargo. He insured his portion of the cargo on the 6th day of June, 1799, in the office of John Pearson, in the sum of \$2,500, paying therefor a premium amounting to \$200.

Thereafter the said John Pearson, as agent for the underwriters, paid to the said Edmund Bartlett the sum of \$2,500 as and for a total loss.

His losses were as follows:

The value of his portion of the cargo.....	\$3,820.00
The premium of insurance paid.....	200.00
	<hr/>
Total.....	\$4,020.00
Less insurance received.....	\$2,500.00
Less two boxes hats sold.....	120.00
	<hr/>
	\$2,620.00
	<hr/>
Leaving a net loss to Edmund Bartlett of....	\$1,400.00

VIII. Case No. 4318. John Wells, James Prince, and Zebedee Cook, all of whom were citizens of the United States, and others who have not appeared in this court, as underwriters in the office of John

Pearson, insured Edmund Bartlett on the 6th of June, 1799, on his portion of the cargo in the sum of \$2,500.

Thereafter the said John Pearson paid for said underwriters to said Edmund Bartlett the sum of \$2,500, as and for a total loss.

The underwriters on said policy who have appeared in this court by legal representatives and the loss sustained by each are as follows:

John Wells	\$300.00
James Prince	500.00
Zebedee Cook	200.00

IX. Case No. 4320. Edmund Kimball and Zebedee Cook, citizens of the United States, as underwriters in the office of John Pearson, on the 18th day March, 1799, insured Smith Adams and Abel Hale on their adventure in the sum of \$350.

Thereafter the said John Pearson, as agent for the said underwriters, paid, on the 18th of January, 1800, to the said Smith Adams and Abel Hale the sum of \$350 as and for a total loss. It does not appear that the said Adams and Hale were citizens of the United States. The underwriters upon said policy have appeared in this case by their legal representatives and the loss sustained by each is as follows:

Edmund Kimball	\$175.00
Zebedee Cook	175.00

X. Case No. 4351. John Pearson, a citizen of the United States, as an underwriter in his own office, on the 20th of January, 1799, insured Samuel Hopkinson and Enoch Hale, Jr., on their adventure in the sum of \$100.

Thereafter the said John Pearson, on the 28th of January, 1800, paid to the said Samuel Hopkinson and Enoch Hale, Jr., the sum of \$100 as and for a total loss. It does not appear that said Hopkinson and Hale were citizens of the United States.

The underwriter upon said policy has appeared in this case by his legal representative and the loss sustained by him is as follows

John Pearson	\$100.00
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XI. The claimants have produced letters of administration upon the estate represented by them and have proved to the satisfaction of the

court that the persons whose estates they represent are the same persons who suffered loss through the capture and condemnation of the *Rose*.

Said claims were not embraced in the convention between the United States and the Republic of France concluded on the 30th of April, 1803. They were not claims growing out of the acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain concluded on the 22d day of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July, 1831.

The claimants in their representative capacity are the owners of said claims, which have never been assigned; nor does it appear that any of said claims are owned by an insurance company.

ARGUMENT FOR THE CLAIMANTS

Mr. C. W. Clagett for the claimants:

(*Mr. John Paul Jones, Mr. R. H. Voorhees, Mr. Edward Lander, Curtis & Pickett, and Mr. John W. Butterfield* represented different claimants.)

If a vessel and cargo prove to be neutral and in no way transgress the rights of belligerents, the right of search is exhausted and the vessel must be permitted to proceed. (Lawrence's *Wheaton*, 846; Woolsey's *International Law*, sec. 10; Hall's *International Law*, sec. 275.)

It was well known at the time of the French spoliations that the French tribunals condemned nearly all American vessels, irrespective of the fact that they had complied with all the requirements of international law. (*Hooper v. U. S.*, 22 C. Cls. 416; *Cushing v. U. S.*, 22 C. Cls. 1.)

If search is made, not to protect belligerent rights, but to harass a neutral which has complied with all the requirements of international law for non-compliance with the regulations of the country to which the searching vessel belongs, the attempt to search is a wrong which may be resisted without subjecting the vessel to condemnation. (1 Kent. 154; Lawrence's *Wheaton*, 866.)

The principle applied to neutral vessels captured by the French at this time, and recaptured, should be applied to cases in which search was resisted.

It is a settled rule that neutral vessels recaptured from a belligerent are to be restored without payment of salvage, on the ground that the vessel would have been restored by the court of the belligerent country; but when France condemned neutral vessels on grounds not justified by international law the rule ceased, and salvage was allowed in cases of recapture. (*The Onskan*, 2 Rob. 300; *Talbot v. Seeman*, 1 Cranch, 1; *Hooper v. U. S.*, 22 C. Cls. 416.)

By the act of June 25, 1798, Congress authorized American vessels to resist visitation and search by the French.

A court of the United States has no authority to declare tortious acts which Congress has declared lawful. (*The Chinese Exclusion Act*, 130 U. S. 581-601.)

Mr. Charles W. Russell (with whom was *Mr. Assistant Attorney-General Pradt*) for the defendants.

OPINION OF THE COURT

WELDON, J., delivered the opinion of the court:

The facts show that the ship *Rose*, William Chase, master, sailed on a commercial voyage from Newburyport, Mass., on the 20th of March, 1799, bound for Surinam, and thence sailed on the 23d of July, 1799, bound home to Newburyport.

While pursuing the last voyage she was captured on the high seas on the 21st of July, 1799, by the French cruiser *L'Egypt Conquise*, mounting 14 guns and 120 men; after an action of two and one-half hours, in which the master of the *Rose* lost three men killed and 14 wounded, and the French lost 25 killed and 21 wounded, the *Rose* was captured and taken into Guadeloupe, where, on the 6th day of August, 1799, the vessel and cargo were condemned by the tribunal of commerce, sitting at Basse-Terre, Guadeloupe, under a decree in which it is alleged that "the captain of said ship was the bearer of a commission from the President of the United States which authorized him to capture French armed vessels and carry them into any port of the United States, and that the captain of the vessel resisted until he was subdued by force of arms. In view of these facts, the court makes reference to articles in justification of said proceedings." The findings establish the fact that the American ship resisted most vigorously the attempted right of search upon the part of the French ship, and we are to determine from that condition as an incident of the seizure whether such seizure and condemnation were illegal.

The legal effect of resisting search on the part of the American ship, when it was sought to be exercised on the part of the French ship, has not been determined by any adjudication of this court in the various cases tried under the Act of Congress, giving this court jurisdiction to determine the claims of American citizens for alleged spoliations committed by the French prior to the 1st day of July, 1801.

The nearest approach that the court has made to the subject of the right of search is in the case of the *Nancy* (27 C. Cls. 99). In that case the ship sailed from Baltimore in 1797; was captured by an English ship and sent to St. Nicolas Mole, and there the master was ordered not to depart without a convoy. She sailed under the escort of a privateer for Jerome and returned to the Mole under escort. On the return voyage the *Nancy* was captured by a French privateer. It is said in that case that "the question whether a neutral vessel laden with neutral cargo is liable to condemnation if captured under enemy convoy has never been directly determined; but on a review of the cases and elementary writers it is now held that if captured when actually and voluntarily under the protection of an enemy, she is liable." Sailing under the convoy of an enemy is the exercise of the same power which is brought into requisition on the part of a neutral vessel when it resists the right of search by actual force.

If sailing under a convoy of an enemy of the belligerent is a just ground for seizure and condemnation, it must follow that resisting the exercise of search, as it was in this case, involves as serious consequences to the neutral vessel as where the right was denied by the presence and use of a convoy.

It is not necessary to multiply authorities to establish the right of search. It is said by Chancellor Kent (1 Kent's Commentaries, p. 155) that "in order to enforce the rights of belligerent nations against the delinquencies of neutrals, and to ascertain the real as well as the assumed character of all vessels on the high seas, the law of nations arms them with the practical power of visitation and search. The duty of self-preservation gives to belligerent nations this right. It is founded upon necessity, and is strictly and exclusively a war right, and does not rightfully exist in time of peace, unless conceded by treaty. All writers upon the law of nations, and the highest authorities, acknowledge the right in time of war as resting on sound principles of public jurisprudence and upon the institutes and practice of all great maritime powers." It is said by the same authority, page

154: "The whole doctrine was ably discussed in the English high court of admiralty in the case of the *Maria*, and it was adjudged that the right was incontestable, and that a neutral sovereign could not, by the interposition of force, vary that right."

In that case it is said by Sir William Scott, in stating the principles of international law upon the subject of search and of the right of a belligerent to search neutral vessels engaged in commerce on the high seas, "that the right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargo, whatever be the destination, is an incontestable right of lawfully commissioned cruisers of a belligerent nation. I say, be the ships, the cargoes, and destinations what they may, because till they are visited and searched it does not appear what the ships, the cargo, or the destinations are, and it is for the purpose of ascertaining these points that the necessity of this right of search exists."

Chancellor Kent, page 155, in further elaboration of the doctrine of the right of search, states the circumstances which might constitute an exception to that general rule, which makes it the duty of the neutral to subject himself to the jurisdiction of the belligerent in the exercise of the right of search. He says:

There may be cases in which the master of a neutral ship may be authorized by the natural right of self-preservation to defend himself against extreme violence threatened by a cruiser grossly abusing his commission; but except in extreme cases a merchant vessel has no right to say for itself, and an armed vessel has no right to say for it, that it will not submit to visitation and search or be carried into a proximate port for judicial inquiry.

The circumstances of this capture do not indicate that the condition cited by Chancellor Kent (which may be regarded as an exception to the general rule) existed in this case. While there might have been in the minds of the crew of the neutral vessel grave apprehensions of ultimate condemnation, even with reference to the legitimate defenses, that condition of apprehension upon the part of the resisting neutral did not justify him in denying the right of search to the belligerent. The circumstances of this case disclose a most vigorous assault and defense, there being twenty-four men killed and thirty-six wounded during the encounter between the respective vessels. This was actual resistance, and was only overcome by the most determined effort upon the part of the capturing vessel.

The right of search is so sacred in the view of international law that it is protected by enforcing the consequences of resistance where no actual resistance is made. As in the case of a convoy, it has been held by this court in the case of the *Nancy* (27 C. Cls. 99) that the presence of a convoy is constructive resistance and a denial of the right of search, which authorizes seizure and consequent condemnation.

It is most strenuously and ably argued by counsel that at the date of capture there was in existence the statute of June 25, 1798, entitled "An Act to authorize the defense of merchant vessels of the United States against French depredations" (1 Stat. L. 572), and that by virtue of the provisions of that act the commander and crew of a vessel had a right to resist by all means in their power an attempt upon the part of a French commander and crew to search the American vessel. It is provided in that statute—

That the commander and crew of any merchant vessel of the United States, owned wholly by a citizen or citizens thereof, may oppose and defend against any search, restraint, or seizure which shall be attempted upon such vessel or upon any other vessel owned, as aforesaid, by the commander or crew of any armed vessel sailing under French colors, or acting or pretending to act by or under the authority of the French Republic; and may repel by force any assault or hostility which shall be made or committed on the part of such French or pretended French vessel pursuing such attempt, and may subdue and capture the same, and may also retake any vessel owned as aforesaid which may have been captured by any vessel sailing under French colors, or acting or pretending to act by or under authority from the French Republic.

Whatever may be said as to the condition or status of the legal rights and obligations of the French and American Governments before the act of July 9, 1798 (1 Stat. L. 578), it must be assumed that after that period the principles and rules of international law determined and controlled the parties with reference to their rights on the high seas.

It is said, in the case of the *Nancy* (*supra*), "it has been urged that the statute of the United States authorizes resistance by our merchantmen to French visitation and search, to which there is the simple answer that no single State can change the law of nations by its municipal regulations."

The contention of claimants' counsel with reference to the rights guaranteed to American merchantmen under and by virtue of the pro-

visions of the act of 1798 is fully answered by the decision of this court in the above case. If, therefore, at the time of this seizure there was any conflict between the municipal law of the United States, as exemplified in the statute, and the well-recognized principles of international law, the latter must prevail in the determination of the rights of the parties.

By the provisions of the act giving this court jurisdiction to ascertain the claims of American citizens for spoliations committed by the French prior to the 31st of July, 1801, it is, in substance, provided that the validity of said claims shall be determined according to the rules of law, municipal and international, and the treaties of the United States applicable to the same. In order to perform the duties consistent with the requirements of the statute, the court must give each department of the law full recognition and force when properly applicable to the facts and circumstances of the controversy involved in the litigation.

The rights of the claimant are to be measured by the unlawful acts of France, and unless a wrong exists under the rules of international law, no liability can attach to the United States; because, by the treaty of 1800, it was only the claims growing out of the wrongful act of France for which the United States had a diplomatic claim and which were assumed to be paid to the citizen whose individual right was violated in that wrong.

This court in making the investigation contemplated by the act of our jurisdiction is sitting in the character of an international tribunal, to determine the diplomatic rights of the United States as they existed against France prior to the ratification of the treaty of September 30, 1800.

The municipal law in the absence of a treaty must be subordinated to international law when they come in antagonism, as that is the law common to both parties.

Where the question is not exclusively within the domain of international law then the municipal law may be invoked to determine the proper solution of the question. The rules of property by which the citizen owned the subject-matter of the seizure and condemnation may be properly applied in ascertainment of his rights, and so may many questions of the law of evidence be decided in accordance with the municipal law of the party whose rights have been violated. Congress, in the enactment of the law of our jurisdiction, must be presumed as

having recognized many of the principles of municipal law incident to our forms of judicial procedure and determination.

It has been argued that the belligerent, in making the attack on the vessel of the claimant, was not in the exercise of the legal right of search as incident to him as a belligerent, but that it was an assault, the object and purpose of which was the seizure and condemnation without reference to the fact or condition of being a neutral vessel of the United States engaged in the peaceful and lawful commerce of the sea; that the condition existing between the two governments and peoples was such that all respect of neutral rights had ceased, and that force, fraud, and violence prevailed, and in that connection much is said as to the right of self-defense.

The claimants are treading on very dangerous ground when they urge the higher law of self-preservation. Self-defense is founded on the theory that it is the only remedy, and that, being the only remedy, it presupposes the absence of all law protecting the rights of him who asserts the prerogative of self-defense. If the right of self-defense prevailed to the extent of repelling force by force, and was incident to the crew of the ship captured, then all other law was silent and war prevailed, which condition would be most disastrous to the case of the claimants.

As we have quoted in another case, decided at the present term of court, from the opinion delivered by Sir William Scott in the case of the *Maria*, in 1 C. Rob. 340, so we quote upon the subject of the right of self-defense in this case:

How stands it by the general law? I do not say that cases may not occur in which a ship may be authorized by the natural rights of self-preservation to defend itself against extreme violence threatened by a cruiser grossly abusing his commission; but where the utmost injury threatened is the being carried in for inquiry into the nearest port, subject to a full responsibility in costs and damages, if this is done vexatiously and without just cause, a merchant vessel has not a right to say for itself (and an armed vessel has not a right to say for it), "I will submit to no such inquiry, but I will take the law into my own hands by force." What is to be the issue, if each neutral vessel has a right to judge for itself in the first instance whether it is rightly detained, and to act upon that judgment to the extent of using force? Surely nothing but battle and bloodshed, as often as there is anything like an equality of force or an equality of spirit.

For the reasons above stated the court decides, as a conclusion of law, that the seizure and condemnation were lawful, and that the owners and insurers had no valid claim of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800, and that the claims were not relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimants are not entitled to recover from the United States.

The facts in detail, with a copy of this opinion, will be certified to Congress in accordance with the statute.

THE SCHOONER *JANE*¹ [AND OTHER CASES]

[French Spoliations, 848, 5446, 5455. Decided December 2, 1901.]

On the Proofs

The *Jane*, being on the high seas, descries a sail, which immediately gives chase.

The *Jane* makes all sail to get away, but the other vessel comes up and fires a gun at her, when it is discovered that she is a cruiser. The *Jane* immediately heaves to; the cruiser fires another gun with ball, and also musketry. The *Jane* returns the fire with one gun. The cruiser continues to fire and the *Jane* hauls down her colors. The French prize court condemns the vessel on other grounds than that of resistance to search.

- I. The visitation and search of neutral vessels at sea is a belligerent right.
- II. It was in 1799 an undisputed rule of international law that deliberate and continued resistance to search on the part of a neutral to a lawful cruiser should be followed by the legal consequence of confiscation.
- III. The object of search is to get evidence of the fact of neutrality of vessel and cargo.
- IV. The *Act of July 9, 1798* (1 Stat. L. 578), which authorized merchant vessels to carry arms for protection, could not change the rule of international law which gave a belligerent a right of search.
- V. A court can not differentiate degrees of resistance which will render a vessel liable or not liable to condemnation for resisting search.
- VI. Where an American vessel attempted flight from an unknown vessel, but on discovering that she was a French cruiser, hove to, and after being then fired into with ball and musketry returned the fire, it was resistance to search.

¹Court of Claims Reports, vol. 37, page 24.

The Reporter's statement of the case:

The following are the facts of the case as found by the court:

I. The schooner *Jane*, Peter Sorensen, master, sailed from Baltimore, Md., on the 15th day of July, 1799, bound for Curaçao.

While peacefully pursuing her said voyage, on the 27th day of July, 1799, she was captured on the high seas by the French privateer *Alliance*, Captain Dupuy, armed with twelve guns, and taken to Porto Rico, where both vessel and cargo were condemned by the decree of the French prize tribunal sitting at Basse-Terre, Guadeloupe, on the 13th day of September, 1799, whereby both vessel and cargo became a total loss to the owners.

The grounds of condemnation, as set forth in the decree of condemnation, are (1) that said schooner had a letter of marque; (2) that said vessel had no *rôle d'équipage*; (3) that one of the invoices, shipped on board, proved to be two trunks of English gingham.

The facts as to the capture of the *Jane* are set forth in the protest of the master, which is as follows:

In the city of St. John, of Puerto Rico, on the 27th July, 1799, at ab't 4 p.m., appeared in my office Peter Sorensen, mast'r of the sch. *Jane*, and Jeffrey Dulano, mate, and said that having sailed f'm Baltimore on the 15th inst., bound to Curaçao, belonging to the Batavian Republic, with a cargo of flour, raisins, brandy, and other articles, they proceeded without accident until the 27th of said month, when they made this is'd of P'to Rico, bearing SE. by S., distant 6 leagues, at break of day, and running before the wind to leeward of s'd is'd, at 9 a.m., they descried a sail to windward, which immediately gave chase to us, while we made all sail to get away from her; but she soon came up with and fired a gun at us, when we discovered to be a cruizer, and immediately hove too, while she fired another gun with ball and some musketry at us, which we returned with one gun, and the privateer continuing to fire her great guns and small arms, w'h damaged our sails, we were obliged, for the safety of our lives, to haul down our colors. Immediately a prize-master and 12 men were sent on board the schooner, and we were carried on board the privateer, with all the ship's paper, which we found she was called the *Alliance*, Capt. Dupuy, mounting 12 guns, w'h a crew of 90 men. And the captain, after examining the papers, ordered to steer for this port, where we arrived on the same day, the 27th inst. They therefor protest, etc., etc., against l'citizen Dupuy, his owner, and all others whom it may concern, for all

damages, etc., etc., to reclaim the same when and where opportunity may serve.

II. The *Jane* was a duly registered vessel of the United States, of 90 69/95 tons burden; was built at Norfolk, Va., in the year 1798, and was owned by David Stewart, David C. Stewart, and John Stewart, composing the firm of David Stewart & Sons, merchants of Baltimore and citizens of the United States.

III. The cargo of the *Jane* consisted of brandy, raisins, and flour, and was owned by said David Stewart & Sons, the owners of the vessel. Edward Courtney had also on board an invoice of dry goods, for which no claim is made.

IV. The losses by reason of the capture and condemnation of the *Jane*, are as follows:

Value of the vessel	\$3,630.00
The freight earnings	1,510.00
Cargo owned by David Stewart & Sons.....	4,860.00
Cargo owned by Edward Courtney	1,214.31
Premium on insurance paid by David Stewart & Sons on vessel	625.00
Premium of insurance paid by David Stewart & Sons on cargo	625.00
Premium of insurance paid by Edward Courtney on cargo	125.00
Amounting in all to	\$12,589.31

V. On September 2, 1799, said David Stewart & Sons insured the vessel and cargo with the Marine Insurance Office, of Baltimore, in the sum of \$10,000, being \$5,000 on the vessel and \$5,000 on the cargo, paying therefor a premium of 12½ per cent, or \$1,250.

Thereafter said insurance office paid to said David Stewart & Sons the sum of \$10,000, as and for a total loss thereon.

On August 23, 1799, Edward Courtney insured his interest in said cargo with the Marine Insurance Office, of Baltimore, in the sum of \$1,000, paying therefor a premium of 12½ per cent, or \$125.

Thereafter said insurance office paid to said Courtney the sum of \$1,000, as and for a total loss thereon.

VI. The losses to the different claimants by reason of said capture and condemnation were as follows:

David Stewart & Sons:

The value of the vessel	\$3,630.00
The freight earnings	1,510.00
The value of their cargo	4,860.00
Premiums of insurance paid	1,250.00
Total	\$11,250.00
Less insurance received	10,000.00
Leaving a net loss to them of.....	\$1,250.00

VII. Ferdinand C. Latrobe is the receiver duly appointed by the circuit court of Baltimore City, Md., of the estates of Aquilla Brown, John Sherlock, and George Grundy, representing all the partners underwriting in the Marine Insurance Office.

VIII. The said administrator and receiver have been duly appointed and represent the parties interested in the estate of the said decedents.

Mr. W. T. S. Curtis for the claimants. *Mr. Frank P. Clark* was on the brief.

Mr. Charles W. Russell for the defendants.

HOWRY, J., delivered the opinion of the court:

The schooner *Jane*, Sorensen, master, sailed from Baltimore, Md., on July 15, 1799, bound for Curaçao. While peacefully pursuing her voyage July 27, 1799, the schooner was captured on the high seas by the French privateer *Alliance* and taken to Porto Rico, where both vessel and cargo were condemned by decree of the French prize tribunal sitting at Basse-Terre, Guadeloupe, on September 13, 1799. The vessel and cargo became a total loss to the owners by virtue of the condemnation. The grounds set forth in the decree of condemnation were that the schooner had a letter of marque, that she was without any *rôle d'équipage*, and that one of the invoices shipped on board proved to be two trunks of English gingham.

The master's protest details the capture of his schooner in the following language:

They descried a sail to windward, which immediately gave chase to us, while we made all sail to get away from her; but she soon came up with and fired a gun at us, when we discovered

her to be a cruiser, and immediately hove to, while she (the cruiser) fired another gun with ball and some musketry at us, which we returned with one gun, and the privateer continuing to fire her great guns and small arms, which damaged our sails, we were obliged, for the safety of our lives, to haul down our colors.

It is not necessary, in the view of the court, to notice the grounds of decision by the prize tribunal, except as it relates to the matter of search.

The right of visitation and search of neutral vessels at sea is a belligerent right, essential to the exercise of the right of capturing enemy's property, contraband of war, and vessels committing a breach of blockade. It is essential, in order to determine whether the ships themselves are neutral and documented as such, according to the law of nations and treaties, even if the right of capturing enemy's property be ever so strictly limited.

The practice of maritime captures could not exist without the privilege, and accordingly the leading sea powers of the world framed their regulations in assertion of the right. It was the undisputed rule of the British Admiralty, according to an order of the council (1664, art. 12, and affirmed by proclamation in 1672) which directed that when any ship met withal by the royal navy shall fight or make resistance the ship and goods should be adjudged lawful prize. The French had previously (1681) set the example by a declaration in their celebrated ordinance of marine that every vessel should be good prize in case of resistance and combat. Resistance alone under this ordinance was deemed sufficient by Valin in his *Commentary* (81), but the Spanish ordinance of 1718, which, the authorities say, was copied from the French ordinance, expressed it in the disjunctive, "in case of resistance *or* combat." (Dana's *Wheat. Inter. L.*, 8th ed., sec. 526.)

Three principles were established in the high court of admiralty in the memorable case of *The Maria* (1 C. Rob. 340). These were that the right of visiting and searching merchant ships on the high seas was an incontestable right of the lawfully mentioned cruisers of a belligerent nation, that the authority of a neutral sovereign being interposed could not legally vary the right of a lawfully mentioned belligerent cruiser, and that the penalty for the violent contravention of the belligerent right was confiscation of the property so withheld from visitation and search. In that decision, delivered in June, 1799, the

vessel was condemned for sailing under convoy of an armed ship for the purpose of resisting visitation and search. The international rule on the subject is conceded by text writers to have been most ably summed up by the judgment in that case, and decisions since then have mainly followed in approval of the reasons there given for the judgment of the court. So that it has come to be accepted as a settled rule (stated by Sir William Scott, upon the authority of Vattel, the institutions of his own and other maritime countries) that the deliberate and continued resistance of search on the part of a neutral vessel to a lawful cruiser will always be followed by the legal consequence of confiscation.

The detention of a neutral vessel is to ascertain, not by the flag merely, which may be fraudulently assumed, but by the documents themselves on board, whether she is really neutral. The object of searching ostensible neutrals is to get evidence as to the fact of neutrality and if the cargo be not enemy's property; or if neutral, whether they are carrying contraband; or whether the vessels are in the service of the enemy in the way of carrying military persons or dispatches or sailing in prosecution of an intent to break blockade. It is sometimes necessary to examine papers and inspect the vessels as well as the cargoes and persons on board, and the question as to the propriety of the capture of each vessel is a mixed question of law and fact.

This right of search is the right of force, though of lawful force, and "a lawful force can not be lawfully resisted." But the *Jane* undertook to resist. Before sailing she was provided with a commission. Presumptively she bore this commission to subdue and capture French vessels under the act of July 9, 1798, 1 Stat. L. 578 (which was enacted to further protect the commerce of the United States). True, this act had no international force. The powers not only did not recognize it as possessing any significance, but this court has since declared that no single State could change the law of nations by its municipal regulations. (*The Nancy*, 27 C. Cls. 99.) As the rules of international law determine and control parties with reference to their rights on the high seas (*The Ship Rose*, 36 C. Cls. 290), so it follows that the right given by the domestic statute to oppose and defend against any search, restraint, or seizure gave way to the international rule. The right of defense was subordinated to the right of search.

Whatever the purpose of the *Jane* in bearing a commission, the fact

remains she did resist. Her master was prevented from successfully acting upon his instructions only by an irresistible force. He did the best he could to resist by the fire of one gun and only struck his colors when there was no help for it. Under these circumstances his acts were acts of resistance and of combat, as far as he could resist and fight.

The attempt to avoid search failed because of the superior speed of the cruiser, which fired a gun at the fleeing vessel. The fire of that gun was intended to cause detention. The master of the vessel in flight hove to only when the cruiser came up; the latter firing another gun with ball and musketry. It does not appear that any damage was done or intended to be done by the second fire beyond an exercise of the force necessary on the part of the cruiser to compel obedience to search. The *Jane* returned the fire, and hauled down her colors, not from choice, but necessity. Can it be doubted from the master's statement that this case would not have arisen had the master been able to make a successful fight?

When, in the determination of these cases, this court undertakes to differentiate the degrees of resistance we tread upon uncertain ground. We invade the right of the belligerent to protect itself against the possible unlawful acts of a neutral, and this can not be safely done without running counter to those rules which every nation claims for itself to protect its authority and power against those seeking to destroy it and those aiding in the attempt.

For the reasons given the court decides, as a conclusion of law, that the seizure was lawful and that the owners and insurers had no valid claim of indemnity upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1830, and that the claims were not relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimants are not entitled to recover from the United States.

The findings of fact, with a copy of this opinion, will be certified to Congress in accordance with the terms of the statute.

NOTT, Ch. J., dissenting:

In 1799, as at the present time, the usage of the sea which governed

the actions of a belligerent cruiser and a neutral merchantman was this:

On sighting a strange sail a neutral merchantman might, and ordinarily would, avoid the stranger by changing her course, if necessary, and crowding sail. It was then incumbent upon a belligerent cruiser, if she would exercise her right of search, to make chase and continue it until she got within gunshot distance, and to disclose her national character, and to fire a shot across the bow of the merchantman. Until the cruiser accomplished this, the merchantman was at liberty to continue her flight and was not regarded as constructively resisting search.

In the words of the leading naval writer of our time (Capt. Alfred T. Mahan), the "neutral is bound to submit to the right of search when overtaken, but is in no wise bound to facilitate it." On the shot being fired across her bow it was obligatory upon the merchantman to display her colors, if she had not already done so, and heave to and submit to visitation and search. On her heaving to and displaying her colors, it became the duty of the cruiser to immediately send an officer on board the merchantman to inspect her papers and, if he saw fit, exercise the right of search. The merchantman was not bound to haul down her flag, which was the badge both of her nationality and her neutrality.

In the present case all of these conditions were complied with. The *Jane* did display her colors and did heave to to await search as soon as she discovered that the pursuing vessel was a French cruiser, and she did not fire her solitary shot at the cruiser until, while awaiting search, the cruiser fired into her with cannon and musketry. In a word, she did not resist search, but exercised the inalienable right of self-defense.

The indisputable conditions of the parties render this clear, and, to my mind, also indisputable. The *Jane* was a little schooner which, at the present day, would be classed as a small coaster. Her length was 66 feet 5 inches, her breadth 19 feet 3 inches, her depth 8 feet 2 inches; she measured less than 91 tons; her crew could not have consisted of more than 6 or 8 men, and the total value of her cargo, as per manifest, was \$6,074.31.

The *Alliance* was a cruiser carrying 12 guns, with a crew of 90 men. Relatively, for "she soon came up with" the *Jane*, she could take any position she chose, and could have sailed around the heavily laden

merchantman and raked her fore and aft. To suppose that against such overwhelming force a paltry little vessel like the *Jane* would heave to, lose her steerage way, and then resist search is to suppose that her master and crew suddenly went mad.

Probably the firing of the shotted gun into the *Jane* was one of those casualties which are classified as the playing with edged tools by children. The blunder of a gunner, a misunderstanding of some order, a spark falling from a heated firing iron, may have caused the shot. But, nevertheless, it was a shot fired, not at this merchantman, but on the American flag; and such shots continued until the schooner hauled down her colors, as enemies surrender in time of war. France owed an explanation of the act to the United States, but that was a matter which belonged and still belongs entirely to the diplomatic realm.

On the 22d June, 1807, a British admiral undertook to apply the British doctrine of the right of search to an American man-of-war, and out of it came what has been known as the affair of the *Chesapeake* and the *Leopard*. The *Chesapeake* had just left the navy-yard at Washington, and her armament was found to be in a disgraceful condition. For twenty minutes the *Leopard* fired into her without her being able to return a single shot. As her flag was coming down, one of her officers, Lieutenant Allen, seized a burning ember in his ungloved hand and fired the only shot fired at the *Leopard*. (2 Cooper Naval History, 104.) This act of Lieutenant Allen was supposed at that time to be for the honor of his flag; that it should not be said that an American man-of-war surrendered without firing a shot.

I do not know that a sense of honor required the master of this little schooner to fire his one shot before he hauled down his flag, but I think I may say with tolerable certainty that no case can be found in judicial decisions, or in elementary writers, or in diplomatic correspondence, where the right of search, even as defined by the two great maritime nations of the earth in the eighteenth century, is held to be or is claimed to be a doctrine so sacred as to obliterate the natural right of self-defense.

It remains to be noted that (as appears from the proceedings before the French prize court) the captain of the *Alliance* made no charge of resistance to search by his prize; that the tribunal of commerce and prizes made no condemnation upon that ground; that the

Jane was condemned because she had on board two trunks of English gingham and her papers did not conform to French laws; and that it was not so much as heard of that the vessel resisted search until, more than one hundred years after the event, the counsel for the United States first formulated that defense. In the most of these French spoliation cases the illegality of the condemnation was in the fact that the French prize courts condemned vessels under French laws instead of releasing them under international law. In this case the illegality of the seizure was supplemented by an outrage upon the neutral flag which the vessel carried.

I regret that I must dissent from the majority of the court, but I can not regard that outrage as something which can render an illegal condemnation legal.

THE SHIP *JAMES AND WILLIAM*¹ [AND OTHER CASES]

[French Spoliations, 1197, 1089, 3817. Decided March 3, 1902]

On the Proofs

The *James and William* sails from Norfolk bound for London in January, 1798, laden with tar and turpentine. She is captured and condemned because the treaty 1795 with Great Britain declares tar and turpentine to be contraband.

- I. By the treaty 1778 with France it was declared that tar and turpentine "*shall not be reputed contraband.*" Until the abrogation of the treaty by the *Act of July 7, 1798* (1 Stat. L. 578), French condemnations on the ground that tar and turpentine were contraband were illegal.
- II. The treaty 1795 with Great Britain did not release France from any obligation of the treaty of 1778.
- III. The decree of the French Government abrogating so much of the treaty of 1778 as related to contraband goods on neutral vessels justified its own cruisers in seizing and its own courts in condemning vessels, but did not abrogate any treaty right of the United States.
- IV. The "*the most-favored nation*" clause in treaties relates to duties and rights and benefits in the ports of the parties. Provisions which declare what shall be regarded as contraband or non-contraband, relate to the procedure of the two nations in time of war, and are not affected by a treaty of either with another power.
- V. Where an American vessel carried the passport or sea letter prescribed by the treaty of 1778 (Art. XXV) it was a case where free ships made free goods under Art. XXIII. The cargo could not be condemned for want of evidence of its neutrality.

¹Court of Claims Reports, vol. 37, page 303.

The Reporters' statement of the case:

The following are the facts of the case as found by the court:

I. The *James and William* sailed from Norfolk, Va., on the 26th of January, 1798, bound for London. On the 22d of February, she was captured on the high seas by the French privateer *President Parker* and carried into the port of Roscoff. On the 5th of March, 1798, she was condemned by the French tribunal of commerce at Morlaix. The grounds of condemnation set forth in the decree were that the tar and turpentine which formed the chief part of her cargo were declared to be good contraband and subject to seizure by the treaty between the United States and Great Britain, bearing date November 19, 1794, article 18, and that the ship's papers were not in proper form.

But it likewise appears by the said decree that there was on board the vessel at the time of seizure a passport from the President of the United States to the master of the ship, dated the 20th of January, 1798, signed "John Adams," President, by Timothy Pickering, Secretary of State, such as was provided for by the treaty with France, February 6, 1778 (Public Treaties, p. 203, Art. XXV), and likewise an affidavit made by the master of the ship, showing that she was a vessel of the United States and that no citizen or subject of powers then at war had any part or interest, directly or indirectly, therein.

II. The *James and William* was a duly registered vessel of the United States; was built in Virginia in 1796, of 209 tons burden, and was owned by John Proudfit and the firm of David Stewart & Sons, citizens of the United States.

III. The cargo of the *James and William* consisted of 1,878 barrels of turpentine and 96 barrels of tar, the property of John Cowper & Co., citizens of the United States, and of a case of deer hides and 17 barrels of gentian, for which no claimant has appeared.

IV. The losses by reason of the capture and condemnation of the *James and William* were as follows:

The value of the vessel was.....	\$ 9,405.00
The freight earnings of the voyage were.....	3,500.00
The value of the cargo belonging to Cowper & Co.....	5,922.00

Amounting in all.....\$18,827.00

V. The loss sustained by John Cowper & Co. was \$5,922.00.

VI. The loss sustained by John Proudfit was:

One-half the value of the vessel.....	\$4,702.50
One-half freight earnings.....	1,750.00
Amounting to.....	<u>\$6,452.50</u>

VII. The loss sustained by the firm of David Stewart & Sons was:

One-half the value of the vessel.....	\$4,702.50
One-half the freight earnings of voyage.....	1,750.00
Amounting to.....	<u>\$6,452.50</u>

VIII. The said firm of John Cowper & Co. was composed of John Cowper, Josiah Cowper, William Cowper, and Robert Cowper, of which John Cowper was the surviving partner.

The firm of David Stewart & Sons was composed of David Stewart, John Stewart, David C. Stewart, and William P. Stewart, of which said William P. Stewart was the surviving partner.

The claimants herein have produced letters of administration for the estates of the parties for whom they appear and have otherwise proved to the satisfaction of the court that they are the same persons who suffered loss by the seizure and condemnation of the *James and William*, as set forth in the preceding findings.

Mr. William E. Curtis and *Mr. Frank P. Clark* for the claimants.

Mr. Charles W. Russell (with whom was *Mr. Assistant Attorney-General Pradt*) for the defendants.

Norr, Ch. J., delivered the opinion of the court:

The vessel in this case sailed from Norfolk on the 26th of January, 1798, bound for a belligerent port, London, laden with tar and turpentine. Tar and turpentine, like horses, "belong to that disputable class of merchandise which may or may not be contraband, according to the circumstances of a case." (Brig *Lucy*, 37 C. Cls. 97.)

By the treaty with France, 1778 (Public Treaties, p. 210, Art. XXIV), horses were declared to be contraband, and tar and turpentine, it was declared, "shall not be reputed contraband." Such was the law between France and the United States. By the treaty of 1794 with Great Britain (Public Treaties, p. 278, Art. XVIII), this policy was in part reversed, and tar and turpentine were declared to be con-

traband and "just subjects of confiscation whenever they are attempted to be carried to an enemy."

The *James and William* was captured in February and condemned in March, 1798, on the ground that her cargo was contraband; that is to say, she was captured before the abrogation of the treaty with France, but after the ratification of the treaty with Great Britain. According to the terms of the two treaties, if an American vessel at that time, laden with tar and turpentine, was sailing for a French port, a British prize court was justified in condemning the cargo as contraband. If she was sailing for a British port, a French prize court was bound, according to the letter of the treaty, to pronounce the cargo non-contraband.

Grounding his argument upon this diversity, the counsel for the United States contends that the treaty with Great Britain was, in this particular, a rescission and abandonment of the treaty with France; or that under the most-favored-nation provision of the treaty (Art. II) France was entitled to the benefit of the treaty with Great Britain.

The counsel for the claimants contend that the treaty with France was still in force and that this provision of the treaty related to commerce and navigation, and not to any matter of neutral rights in time of war.

The court is of the opinion that the United States relinquished no obligation to France by their treaty with Great Britain. A nation may abrogate a treaty as it may make a treaty—on its own motion, upon its own responsibility. There is no international forum which can decree that it has no right to do so. What follows the abrogation of a treaty is a matter between the two nations. It may be followed by an interval in which they have no treaty relations, or it may be followed by war. But a nation can not at its pleasure abrogate one article of a treaty and leave all of the other obligations in effect, binding the other power. The decree of the French Government abrogating so much of the treaty of 1778 as related to contraband goods on neutral vessels justified its own cruisers in seizing vessels and its own prize courts in condemning them, but without notice to and acquiescence on the part of the United States the decree could not *ex proprio vigore* extend to the treaty rights of the United States. In July, 1798 (*Act of July 7, 1798, 1 Stat. L. 578*), the United States abrogated the treaty *in toto*, and thereby relieved France from all obligations under it. This court in these spoliation cases has always

recognized that release from treaty obligation, and has given to France the full benefits, whatever they may have been, of such exemption.

The most-favored-nation clause of the treaty of 1778 is in these words:

The Most Christian King and the United States engage mutually not to grant any particular favor to other nations in respect of commerce and navigation which shall not immediately become common to the other party, who shall enjoy the same favor, freely, if the concession was freely made, or on allowing the same compensation if the concession was conditional.

It is well known that such provisions in a treaty relate to duties, rights, and benefits in the ports of either ally, and it has been so said of this provision in the treaty of 1778. (Wharton's Int. Law, vol. II, sec. 148.) The other provisions of this treaty (Art. XXIII) related strictly to the procedure between the two nations in time of war. What they agreed should be the rule between themselves concerning goods which might or might not be contraband concerned only themselves. No other nation was benefited or injured by their entering into that treaty obligation. Conversely, the rule which the United States might establish in conjunction with any other power did not concern France. The definition of what should be regarded as contraband or not contraband was not a favor, but a mutual and reciprocal obligation. It worked both ways. If the case had been reversed, and the United States had been the belligerent and France the neutral, the exemption would have operated against the United States. If American cruisers in these reversed conditions had seized French merchantmen, because France had made a different treaty with another power, it can not be supposed that France would have submitted to such seizures and condemnations.

It is also contended by the defendant's counsel that so much of the cargo as belonged to Cowper & Co., of Norfolk, Va., was liable to condemnation, because it did not appear by the ship's papers that it was neutral property. There was, indeed, an invoice on board averring it to be such, but the invoice was not signed. Without passing upon the question whether such an invoice should have been regarded as evidence by the prize court of the neutrality of the cargo—that is to say, that it was the property of Cowper & Co., citizens of the United States, doing business in Norfolk, Va.—the court is of the opinion

that the cargo was illegally condemned under other provisions of the treaty of 1778.

It appears that the vessel carried a passport or sea letter from the President of the United States, such as was provided for by the treaty, "to the end that all manner of dissensions and quarrels may be avoided and prevented on one side and the other." (Art. XXV.) The last clause of the article is in these words:

And if anyone shall think it fit or advisable to express in the said certificate the person to whom the goods on board belong, he may freely do so.

A previous article (XXIII) declares that free ships make free goods, and that it shall be lawful for citizens, people, and inhabitants of the said United States to sail with their ships with all manner of liberty and security, "no distinction being made who are the proprietors of the merchandises laden thereon, from any port to the places of those who now are or hereafter shall be at enmity with the Most Christian King." It also provides:

And it is hereby stipulated that free ships shall also give a freedom to goods, and that everything shall be deemed to be free and exempt which shall be found on board the ships belonging to the subject of either of the confederates, although the whole lading or any part thereof should appertain to the enemies of either, contraband goods being always excepted. It is also agreed in like manner that the same liberty be extended to persons who are on board a free ship, with this effect, that although they be enemies to both or either party, they are not to be taken out of that free ship, unless they are soldiers and in actual service of the enemies.

These provisions taken together clearly exempted the shipper and the ship from carrying evidence of neutrality or ownership of the cargo. The unquestionable intent of the treaty was to reduce the dangerous power of the right of search to a minimum, excepting only from its liberal provisions contraband goods.

The case will be reported to Congress, together with a copy of this opinion.

PUBLICATIONS
OF
THE CARNEGIE ENDOWMENT FOR
INTERNATIONAL PEACE

Secretary's Office

†Year Book for 1911; Year Book for 1912; Year Book for 1913-1914;
Year Book for 1915; †Year Book for 1916.

Division of Intercourse and Education

- No. 1 SOME ROADS TOWARDS PEACE: A REPORT ON OBSERVATIONS MADE IN CHINA AND JAPAN IN 1912. BY DR. CHARLES W. ELIOT. vi—88 p.
 - †No. 2 GERMAN INTERNATIONAL PROGRESS IN 1913. BY PROFESSOR DR. WILHELM PASZKOWSKI. iii—11 p.
 - No. 3 EDUCATIONAL EXCHANGE WITH JAPAN. BY DR. HAMILTON W. MARIE. 8 p.
 - †No. 4 REPORT OF THE INTERNATIONAL COMMISSION TO INQUIRE INTO THE CAUSES AND CONDUCT OF THE BALKAN WARS. ix—418 p., illus., maps.
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 - No. 8 THE SAME, IN THE ORIGINAL SPANISH, PORTUGUESE AND FRENCH. viii—221 p.
- A second edition of Mr. Bacon's Report, containing Nos. 7 and 8 in one volume, has also been published.
- No. 9 FORMER SENATOR BURTON'S TRIP TO SOUTH AMERICA. BY OTTO SCHOENRICH. iii—40 p.

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OPINIONS OF ATTORNEYS GENERAL, DECISIONS OF FEDERAL COURTS, AND DIPLOMATIC CORRESPONDENCE RESPECTING THE TREATIES OF 1785, 1799 AND 1828 BETWEEN THE UNITED STATES AND PRUSSIA.

**PUBLISHED BY THE ENDOWMENT
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1917

OPINIONS OF ATTORNEYS GENERAL, DECISIONS OF FEDERAL
COURTS AND DIPLOMATIC CORRESPONDENCE RESPECTING
THE TREATIES OF 1785, 1799 AND 1828 BETWEEN THE UNITED
STATES AND PRUSSIA.

Texts of Treaties between the United States and Prussia

TREATY OF 1785¹

*Concluded September 10, 1785; Ratified by the Congress May 17, 1786;
Ratifications Exchanged October, 1786*

His Majesty the King of Prussia and the United States of America, desiring to fix, in a permanent and equitable manner, the rules to be observed in the intercourse and commerce they desire to establish between their respective countries. His Majesty and the United States have judged that the said end cannot be better obtained than by taking the most perfect equality and reciprocity for the basis of their agreement.

With this view, His Majesty the King of Prussia has nominated and constituted as his Plenipotentiary, the Baron Frederick William de Thulemeier, his Privy Counsellor of Embassy, and Envoy Extraordinary with their High Mightinesses the States-General of the United Netherlands; and the United States have, on their part, given full powers to John Adams, Esquire, late one of their Ministers Plenipotentiary for negotiating a peace, heretofore a Delegate in Congress from the State of Massachusetts, and Chief Justice of the same, and now Minister Plenipotentiary of the United States with His Britannic Majesty; Doctor Benjamin Franklin, late Minister Plenipotentiary at the Court of Versailles, and another of their Ministers Plenipotentiary for negotiating a peace; and Thomas Jefferson, heretofore a Delegate in Congress from the State of Virginia, and Governor of the said State, and now Minister Plenipotentiary of the United States at the

¹8 Stat. L. 378; Malloy's *Treaties*, etc., Vol. 2, p. 1477.

NOTE: This treaty expired by its own limitations October, 1796, but Article XII was revived by Article XII of the treaty of 1828.

Court of His Most Christian Majesty; which respective Plenipotentiaries, after having exchanged their full powers, and on mature deliberation, have concluded, settled, and signed the following articles:

ARTICLE I

There shall be a firm, inviolable, and universal peace and sincere friendship between His Majesty the King of Prussia, his heirs, successors, and subjects, on the one part, and the United States of America and their citizens on the other, without exception of persons or places.

ARTICLE II

The subjects of His Majesty the King of Prussia may frequent all the coasts and countries of the United States of America, and reside and trade there in all sorts of produce, manufactures, and merchandize; and shall pay within the said United States no other or greater duties, charges, or fees whatsoever, than the most favoured nations are or shall be obliged to pay: and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which the most favoured nation does or shall enjoy; submitting themselves nevertheless to the laws and usages there established, and to which are submitted the citizens of the United States, and the citizens and subjects of the most favoured nations.

ARTICLE III

In like manner the citizens of the United States of America may frequent all the coasts and countries of His Majesty the King of Prussia, and reside and trade there in all sorts of produce, manufactures, and merchandize; and shall pay in the dominions of his said Majesty no other or greater duties, charges, or fees whatsoever than the most favoured nation is or shall be obliged to pay: and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which the most favoured nation does or shall enjoy; submitting themselves nevertheless to the laws and usages there established, and to which are submitted the subjects of His Majesty the King of Prussia, and the subjects and citizens of the most favoured nations.

ARTICLE IV

More especially each party shall have a right to carry their own produce, manufactures, and merchandize in their own or any other vessels to any parts of the dominions of the other, where it shall be

lawful for all the subjects or citizens of that other freely to purchase them; and thence to take the produce, manufactures, and merchandize of the other, which all the said citizens or subjects shall in like manner be free to sell them, paying in both cases such duties, charges, and fees only as are or shall be paid by the most favoured nation. Nevertheless, the King of Prussia and the United States, and each of them, reserve to themselves the right, where any nation restrains the transportation of merchandise to the vessels of the country of which it is the growth or manufacture, to establish against such nations retaliating regulations; and also the right to prohibit, in their respective countries, the importation and exportation of all merchandise whatsoever, when reasons of state shall require it. In this case, the subjects or citizens of either of the contracting parties shall not import nor export the merchandise prohibited by the other; but if one of the contracting parties permits any other nation to import or export the same merchandize, the citizens or subjects of the other shall immediately enjoy the same liberty.

ARTICLE V

The merchants, commanders of vessels, or other subjects or citizens of either party, shall not within the ports of jurisdiction of the other be forced to unload any sort of merchandize into any other vessels, nor to receive them into their own, nor to wait for their being loaded longer than they please.

ARTICLE VI

That the vessels of either party loading within the ports or jurisdiction of the other may not be uselessly harassed or detained, it is agreed that all examinations of goods required by the laws shall be made before they are laden on board the vessel, and that there shall be no examination after; nor shall the vessel be searched at any time, unless articles shall have been laden therein clandestinely and illegally, in which case the person by whose order they were carried on board, or who carried them without order, shall be liable to the laws of the land in which he is; but no other person shall be molested, nor shall any other goods, nor the vessel, be seized or detained for that cause.

ARTICLE VII

Each party shall endeavor, by all the means of their power, to protect and *desend* [defend] all vessels and other effects belonging to the

citizens or subjects of the other, which shall be within the extent of their jurisdiction, by sea or by land: and shall use all their efforts to recover, and cause to be restored to the right owners, their vessels and effects which shall be taken from them within the extent of their said jurisdiction.

ARTICLE VIII

The vessels of the subjects or citizens of either party, coming on any coast belonging to the other, but not willing to enter into port, or being entered into port, and not willing to unload their cargoes or break bulk, shall have liberty to depart and to pursue their voyage without molestation, and without being obliged to render account of their cargo, or to pay any duties, charges, or fees whatsoever, except those established for vessels entered into port, and appropriated to the maintenance of the port itself, or of other establishments for the safety and convenience of navigators, which duties, charges, and fees shall be the same, and shall be paid on the same footing as in the case of subjects or citizens of the country where they are established.

ARTICLE IX

When any vessel of either party shall be wrecked, foundered, or otherwise damaged on the coasts, or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and if the operations of repair shall require that the whole or any part of their cargo be unladed, they shall pay no duties, charges, or fees on the part which they shall relade and carry away. The ancient and barbarous right to wrecks of the sea shall be entirely abolished, with respect to the subjects and citizens of the two contracting parties.

ARTICLE X

The citizens or subjects of each party shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise; and their representatives, being subjects or citizens of the other party, shall succeed to their said personal goods, whether by testament or ab intestato, and may take possession thereof either by themselves or by others acting for them, and dispose of the

same at their will, paying such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods, and for so long a time as would be taken of the goods of a native in like case, until the lawful owner may take measures for receiving them. And if question shall arise among several claimants to which of them the said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate within the territories of the one party, such real estate would by the laws of the land descend on a citizen or subject of the other, were he not disqualified by alienage, such subject shall be allowed a reasonable time to sell the same, and to withdraw the proce[eds] without molestation, and exempt from all rights of detraction on the part of the Government of the respective States. But this article shall not derogate in any manner from the force of the laws already published or hereafter to be published, by His Majesty the King of Prussia, to prevent the emigration of his subjects.

ARTICLE XI

The most perfect freedom of conscience and of worship is granted to the citizens or subjects of either party within the jurisdiction of the other, without being liable to molestation in that respect for any cause other than an insult on the religion of others. Moreover, when the subjects or citizens of the one party shall die within the jurisdiction of the other, their bodies shall be buried in the usual burying-grounds or other decent and suitable places, and shall be protected from violation or disturbance.

ARTICLE XII ¹

If one of the contracting parties should be engaged in war with any other Power, the free intercourse and commerce of the subjects or citizens of the party remaining neuter with the belligerent Powers shall not be interrupted. On the contrary, in that case, as in full peace, the vessels of the neutral party may navigate freely to and from the ports and on the coasts of the belligerent parties, free vessels making free goods, insomuch that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party, although such things belong to an enemy of the other; and the same freedom shall

¹Revived by treaty of 1828.

be extended to persons who shall be on board a free vessel, although they should be enemies to the other party, unless they be soldiers in actual service of such enemy.

ARTICLE XIII

And in the same case of one of the contracting parties being engaged in war with any other Power, to prevent all the difficulties and misunderstandings that usually arise respecting the merchandize heretofore called contraband, such as arms, ammunition, and military stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of one of the parties to the enemies of the other, shall be deemed contraband, so as to induce confiscation or condemnation and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding, paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors: And it shall further be allowed to use in the service of the captors the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed, of a vessel stopped for articles heretofore deemed contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

ARTICLE XIV

And in the same case where one of the parties is engaged in war with another Power, that the vessels of the neutral party may be readily and certainly known, it is agreed that they shall be provided with sea-letters or passports, which shall express the name, the property, and burthen of the vessel, as also the name and dwelling of the master; which passports shall be made out in good and due forms (to be settled by conventions between the parties whenever occasion shall require), shall be renewed as often as the vessel shall return into port, and shall be exhibited whensoever required, as well in the open sea as in port. But if the said vessel be under convoy of one or more vessels of war belonging to the neutral party, the simple declaration of the

officer commanding the convoy, that the said vessel belongs to the party of which he is, shall be considered as establishing the fact, and shall relieve both parties from the trouble of further examination.

ARTICLE XV

And to prevent entirely all disorder and violence in such cases, it is stipulated, that when the vessels of the neutral party, sailing without convoy, shall be met by any vessel of war, public or private, of the other party, such vessel of war shall not approach within cannon-shot of the said neutral vessel, nor send more than two or three men in their boat on board the same, to examine her sea-letters or passports. And all persons belonging to any vessel of war, public or private, who shall molest or injure in any manner whatever the people, vessels, or effects of the other party, shall be responsible in their persons and property for damages and interest, sufficient security for which shall be given by all commanders of private armed vessels before they are commissioned.

ARTICLE XVI

It is agreed that the subjects or citizens of each of the contracting parties, their vessels and effects, shall not be liable to any embargo or detention on the part of the other, for any military expedition, or other public or private purpose whatsoever. And in all cases of seizure, detention, or arrests for debts contracted or offences committed by any citizen or subject of the one party, within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases.

ARTICLE XVII

If any vessel or effects of the neutral Power be taken by an enemy of the other, or by a pirate, and retaken by that other, they shall be brought into some port of one of the parties, and delivered into the custody of the officers of that port, in order to be restored entire to the true proprietor, as soon as due proof shall be made concerning the property thereof.

ARTICLE XVIII

If the citizens or subjects of either party, in danger from tempests, pirates, enemies, or other accident, shall take refuge with their vessels

or effects, within the harbours or jurisdiction of the other, they shall be received, protected, and treated with humanity and kindness, and shall be permitted to furnish themselves, at reasonable prices, with all refreshments, provisions, and other things necessary for their sustenance, health, and accommodation, and for the repair of their vessels.

ARTICLE XIX

The vessels of war, public and private, of both parties, shall carry freely wheresoever they please the vessels and effects taken from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes be arrested, searched, or put under legal process, when they come to and enter the ports of the other party, but may freely be carried out again at any time by their captors to the places expressed in their commissions, which the commanding officer of such vessel shall be obliged to shew. But no vessel which shall have made prizes on the subjects of His Most Christian Majesty the King of France shall have a right of asylum in the ports or havens of the said United States; and if any such be forced therein by tempest or dangers of the sea, they shall be obliged to depart as soon as possible, according to the tenor of the treaties existing between his said Most Christian Majesty and the said United States.

ARTICLE XX

No citizen or subject of either of the contracting parties shall take from any Power with which the other may be at war any commission or letter of marque for arming any vessel to act as a privateer against the other, on pain of being punished as a pirate; nor shall either party hire, lend, or give any part of their naval or military force to the enemy of the other, to aid them offensively or defensively against that other.

ARTICLE XXI

If the two contracting parties should be engaged in war against a common enemy, the following points shall be observed between them:

1. If a vessel of one of the parties retaken by a privateer of the other shall not have been in possession of the enemy more than twenty-four hours, she shall be restored to the first owner for one-third of

the value of the vessel and cargo; but if she shall have been more than twenty-four hours in possession of the enemy, she shall belong wholly to the recaptor.

2. If in the same case the recapture were by a public vessel of war of the one party, restitution shall be made to the owner for one-thirtieth part of the value of the vessel and cargo, if she shall not have been in possession of the enemy more than twenty-four hours and one-tenth of the said value where she shall have been longer; which sums shall be distributed in gratuities to the recaptors.

3. The restitution in the cases aforesaid shall be after due proof of property, and surety given for the part to which the recaptors are entitled.

4. The vessels of war, public and private, of the two parties, shall be reciprocally admitted with their prizes into the respective ports of each: but the said prizes shall not be discharged nor sold there, until their legality shall have been decided, according to the laws and regulations of States to which the captor belongs, but by the judicatures of the place into which the prize shall have been conducted.

5. It shall be free to each party to make such regulations as they shall judge necessary for the conduct of their respective vessels of war, public and private, relative to the vessels which they shall take and carry into the ports of the two parties.

ARTICLE XXII

Where the parties shall have a common enemy, or shall both be neutral, the vessels of war of each shall upon all occasions take under their protection the vessels of the other going the same course, and shall defend such vessels as long as they hold the same course against all force and violence, in the same manner as they ought to protect and defend vessels belonging to the party of which they are.

ARTICLE XXIII

If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs and may depart freely, carrying off all their effects without molestation or hindrance. And all women and children, scholars of every faculty, cultivators of the earth, artizans, manufacturers, and fishermen, un-

from the exchange of ratifications; and if the expiration of that term should happen during the course of a war between them, then the articles before provided for the regulation of their conduct during such a war, shall continue in force until the conclusion of the treaty which shall re-establish peace; and that this treaty shall be ratified on both sides, and the ratifications exchanged within one year from the day of its signature.

In testimony whereof the Plenipotentiaries before mentioned, have hereto subscribed their names and affixed their seals, at the places of their respective residence, and at the dates expressed under their several signatures.

[Seal] B. FRANKLIN.
Passy, July 9, 1785.
 [Seal] TH: JEFFERSON.
Paris, July 28, 1785.
 [Seal] JOHN ADAMS.
London, August 5, 1785.
 [Seal] F. G. DE THULEMEIER.
A la Haye le 10 Septembre, 1785.

TREATY OF 1799¹

Concluded July 11, 1799; Ratification Advised by the Senate, February 18, 1800; Ratified by the President, February 19, 1800; Ratifications Exchanged June 22, 1800; Proclaimed November 4, 1800.

His Majesty the King of Prussia and the United States of America, desiring to maintain upon a stable and permanent footing the connections of good understanding which have hitherto so happily subsisted between their respective States, and for this purpose to renew the treaty of amity and commerce concluded between the two Powers at the Hague the 10th of September, 1785, for the term of ten years, His Prussian Majesty has nominated and constituted as his plenipotentiaries the Count Charles William de Finkenstein, his Minister of State, of War, and of the Cabinet, Knight of the Orders of the Black Eagle and of the Red Eagle, and Commander of that of St. John of Jerusalem, the Baron Philip Charles d'Alvensleben, his Minister of State, of War, and of the Cabinet, Knight of the Orders of the Black Eagle and of the Red Eagle, and of that of St. John of Jerusalem, and the Count

¹8 Stat. L. 162; Malloy's *Treaties*, etc., Vol. 2, p. 1486.

Christian Henry Curt de Haugwitz, his Minister of State, of War, and of the Cabinet, Knight of the Orders of the Black Eagle and of the Red Eagle; and the President of the United States has furnished with their full powers John Quincy Adams, a citizen of the United States, and their Minister Plenipotentiary at the Court of His Prussian Majesty; which Plenipotentiaries, after having exchanged their full powers, found in good and due form, have concluded, settled, and signed the following articles:

ARTICLE I

There shall be in future, as there has been hitherto, a firm, inviolable, and universal peace and a sincere friendship between His Majesty the King of Prussia, his heirs, successors, and subjects, on the one part, and the United States of America and their citizens on the other, without exception of persons or places.

ARTICLE II

The subjects of His Majesty the King of Prussia may frequent all the coasts and countries of the United States of America, and reside and trade there in all sorts of produce, manufactures, and merchandize, and shall pay there no other or greater duties, charges, or fees whatsoever than the most favoured nations are or shall be obliged to pay. They shall also enjoy in navigation and commerce all the rights, privileges, and exemptions which the most favoured nation does or shall enjoy, submitting themselves, nevertheless, to the e[s]tablished laws and usages to which are submitted the citizens of the United States and the most favoured nations.

ARTICLE III

In like manner, the citizens of the United States of America may frequent all the coasts and countries of His Majesty the King of Prussia, and reside and trade there in all sorts of produce, manufactures, and merchandize, and shall pay, in the dominions of his said Majesty, no other or greater duties, charges, or fees whatsoever than the most favoured nation is or shall be obliged to pay; and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which the most favoured nation does or shall enjoy, submitting themselves, nevertheless, to the established laws and usages to which are submitted the subjects of His Majesty the King of Prussia and the subjects and the citizens of the most favoured nations.

ARTICLE IV

More especially, each party shall have a right to carry their own produce, manufactures, and merchandize, in their own or any other vessels, to any parts of the dominions of the other, where it shall be lawful for all the subjects and citizens of that other freely to purchase them, and thence to take the produce, manufactures, and merchandize of the other, which all the said citizens or subjects shall in like manner be free to sell to them, paying in both cases such duties, charges, and fees only, as are or shall be paid by the most favoured nation. Nevertheless, His Majesty the King of Prussia and the United States respectively reserve to themselves the right, where any nation restrains the transportation of merchandize to the vessels of the country of which it is the growth or manufacture, to establish against such nation retaliating regulations; and also the right to prohibit in their respective countries the importation and exportation of all merchandize whatsoever, when reasons of state shall require it. In this case the subjects or citizens of either of the contracting parties shall not import or export the merchandize prohibited by the other. But if one of the contracting parties permits any other nation to import or export the same merchandize, the citizens or subjects of the other shall immediately enjoy the same liberty.

ARTICLE V

The merchants, commanders of vessels, or other subjects or citizens of either party, shall not, within the ports or jurisdiction of the other, be forced to unload any sort of merchandize into any other vessels nor to receive them into their own, nor to wait for their being loaded longer than they please.

ARTICLE VI

That the vessels of either party, loading within the ports or jurisdiction of the other, may not be uselessly harassed, or detained, it is agreed, that all examinations of goods, required by the laws, shall be made before they are laden on board the vessel, and that there shall be no examination after; nor shall the vessel be searched at any time, unless articles shall have been laden therein clandestinely and illegally, in which case the person by whose order they were carried on board, or who carried them without order, shall be liable to the laws of the land in which he is, but no other person shall be molested, nor shall any other goods, nor the vessel, be seized or detained for that cause.

ARTICLE VII

Each party shall endeavour by all the means in their power to protect and defend all vessels and other effects, belonging to the citizens or subjects of the other, which shall be within the extent of their jurisdiction by sea or by land; and shall use all their efforts to recover and cause to be restored to the right owners their vessels and effects, which shall be taken from them within the extent of their said jurisdiction.

ARTICLE VIII

The vessels of the subjects or citizens of either party, coming on any coast belonging to the other, but not willing to enter into port, or who entering into port are not willing to unload their cargoes or break bulk, shall have liberty to depart and to pursue their voyage without molestation, and without being obliged to render account of their cargoes, or to pay any duties, charges, or fees whatsoever, except those established for vessels entered into port, and appropriated to the maintenance of the port itself, or of other establishments for the safety and convenience of navigators, which duties, charges, and fees shall be the same, and shall be paid on the same footing, as in the case of subjects or citizens of the country where they are established.

ARTICLE IX

When any vessel of either party shall be wrecked, foundered, or otherwise damaged, on the coasts or within the dominions of the other, their respective citizens or subjects shall receive, as well for themselves as for their vessels and effects the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and if the operations of repair shall require that the whole or any part of the cargo be unladed, they shall pay no duties, charges, or fees on the part which they shall relade and carry away. The ancient and barbarous right to wrecks of the sea shall be entirely abolished with respect to the subjects or citizens of the two contracting parties.

ARTICLE X

The citizens or subjects of each party shall have power to dispose of their personal goods within the jurisdiction of the other, by testa-

ment, donation, or otherwise, and their representatives, being subjects or citizens of the other party, shall succeed to their said personal goods, whether by testament or ab intestato, and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods as would be taken of the goods of a native in like case, untill the lawfull owner may take measures for receiving them. And if question should arise among several claimants to which of them the said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person, holding real estate, within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds, without molestation, and exempt from all rights of detraction on the part of the Government of the respective States. But this article shall not derogate in any manner from the force of the laws already published or hereafter to be published by His Majesty the King of Prussia, to prevent the emigration of his subjects.

ARTICLE XI

The most perfect freedom of conscience and of worship is granted to the citizens or subjects of either party within the jurisdiction of the other, and no person shall be molested in that respect for any cause other than an insult on the religion of others. Moreover, when the subjects or citizens of the one party shall die within the jurisdiction of the other, their bodies shall be buried in the usual burying-grounds, or other decent and suitable places, and shall be protected from violation or disturbance.

ARTICLE XII

Experience having proved, that the principle adopted in the twelfth article of the treaty of 1785, according to which free ships make free goods, has not been sufficiently respected during the two last wars, and especially in that which still continues, the two contracting parties propose, after the return of a general peace, to agree, either separately between themselves or jointly with other Powers alike interested, to

concert with the great maritime Powers of Europe such arrangements and such permanent principles as may serve to consolidate the liberty and the safety of the neutral navigation and commerce in future wars. And if in the interval either of the contracting parties should be engaged in a war to which the other should remain neutral, the ships of war and privateers of the belligerent Power shall conduct themselves towards the merchant vessels of the neutral Power as favourably as the course of the war then existing may permit, observing the principles and rules of the law of nations generally acknowledged.

ARTICLE XIII

And in the same case of one of the contracting parties being engaged in war with any other Power, to prevent all the difficulties and misunderstandings that usually arise respecting merchandize of contraband, such as arms, ammunition, and military stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of either party, to the enemies of the other, shall be deemed contraband, so as to induce confiscation or condemnation and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding, paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors; and it shall further be allowed to use in the service of the captors the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

All cannons, mortars, fire-arms, pistols, bombs, grenades, bullets, balls, muskets, flints, matches, powder, saltpeter, sulphur, cuirasses, pikes, swords, belts, cartouch boxes, saddles and bridles, beyond the quantity necessary for the use of the ship, or beyond that which every man serving on board the vessel, or passenger, ought to have; and in general whatever is comprised under the denomination of arms and

military stores, of what description soever, shall be deemed objects of contraband.

ARTICLE XIV

To ensure to the vessels of the two contracting parties the advantage of being readily and certainly known in time of war, it is agreed that they shall be provided with the sea-letters and documents hereafter specified:

1. A passport, expressing the name, the property, and the burthen the vessel, as also the name and dwelling of the master, which passport shall be made out in good and due form, shall be renewed as often as the vessel shall return into port, and shall be exhibited whensoever required, as well in the open sea as in port. But if the vessel be under convoy of one or more vessels of war, belonging to the neutral party, the simple declaration of the officer commanding the convoy, that the said vessel belongs to the party of which he is, shall be considered as establishing the fact, and shall relieve both parties from the trouble of further examination.

2. A charter-party, that is to say, the contract passed for the freight of the whole vessel, or the bills of lading given for the cargo in detail.

3. The list of the ship's company, containing an indication by name and in detail of the persons composing the crew of the vessel. These documents shall always be authenticated according to the forms established at the place from which the vessel shall have sailed.

As their production ought to be exacted only when one of the contracting parties shall be at war, and as their exhibition ought to have no other object than to prove the neutrality of the vessel, its cargo, and company, they shall not be deemed absolutely necessary on board such vessels belonging to the neutral party as shall have sailed from its ports before or within three months after the Government shall have been informed of the state of war in which the belligerent party shall be engaged. In the interval, in default of these specific documents, the neutrality of the vessel may be established by such other evidence as the tribunals authorised to judge of the case may deem sufficient.

ARTICLE XV

And to prevent entirely all disorder and violence in such cases, it is stipulated that, when the vessels of the neutral party, sailing without convoy, shall be met by any vessels of war, public or private, of the

other party, such vessel of war shall not send more than two or three men in their boat on board the said neutral vessel to examine her passports and documents. And all persons belonging to any vessel of war, public or private, who shall molest or insult in any manner whatever, the people, vessels, or effects of the other party, shall be responsible in their persons and property for damages and interest, sufficient security for which shall be given by all commanders of private armed vessels before they are commissioned.

ARTICLE XVI

In times of war, or in cases of urgent necessity, when either of the contracting parties shall be obliged to lay a general embargo, either in all its ports, or in certain particular places, the vessels of the other party shall be subject to this measure, upon the same footing as those of the most favoured nations, but without having the right to claim the exemption in their favour stipulated in the sixteenth article of the former treaty of 1785. But on the other hand, the proprietors of the vessels which shall have been detained, whether for some military expedition, or for what other use soever, shall obtain from the Government that shall have employed them an equitable indemnity, as well for the freight as for the loss occasioned by the delay. And furthermore, in all cases of seizure, detention, or arrest, for debts contracted or offences committed by any citizen or subject of the one party within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases.

ARTICLE XVII

If any vessel or effects of the neutral Power be taken by an enemy of the other, or by a pirate, and retaken by the Power at war, they shall be restored to the first proprietor, upon the conditions hereafter stipulated in the twenty-first article for cases of recapture.

ARTICLE XVIII

If the citizens or subjects of either party, in danger from tempests, pirates, enemies, or other accidents, shall take refuge, with their vessels or effects, within the harbours or jurisdiction of the other, they shall be received, protected, and treated with humanity and kindness, and shall be permitted to furnish themselves, at reasonable prices, with

all refreshments, provisions, and other things necessary for their sustenance, health, and accom[m]odation, and for the repair of their vessels.

ARTICLE XIX

The vessels of war, public and private, of both parties, shall carry freely, wheresoever they please, the vessels and effects taken from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others ; nor shall such prizes be arrested, searched, or put under legal process, when they come to and enter the ports of the other party, but may freely be carried out again at any time by their captors to the places expressed in their commissions, which the commanding officer of such vessel shall be obliged to shew. But, conformably to the treaties existing between the United States and Great Britain, no vessel that shall have made a prize upon British subjects shall have a right to shelter in the ports of the United States, but if forced therein by tempests, or any other danger or accident of the sea, they shall be obliged to depart as soon as possible.

ARTICLE XX

No citizen or subject of either of the contracting parties shall take from any Power with which the other may be at war any commission or letter of marque, for arming any vessel to act as a privateer against the other, on pain of being punished as a pirate ; nor shall either party hire, lend, or give any part of its naval or military force to the enemy of the other, to aid them offensively or defensively against the other.

ARTICLE XXI

If the two contracting parties should be engaged in a war against a common enemy, the following points shall be observed between them :

1. If a vessel of one of the parties, taken by the enemy, shall, before being carried into a neutral or enemy's port, be retaken by a ship of war or privateer of the other, it shall, with the cargo, be restored to the first owners, for a compensation of one-eighth part of the value of the said vessel and cargo, if the recapture be made by a public ship of war, and one-sixth part, if made by a privateer.

2. The restitution in such cases shall be after due proof of property, and surety given for the part to which the recaptors are entitled.

3. The vessels of war, public and private, of the two parties, shall

reciprocally be admitted with their prizes into the respective ports of each, but the said prizes shall not be discharged or sold there, until their legality shall have been decided according to the laws and regulations of the State to which the captor belongs, but by the judicatories of the place into which the prize shall have been conducted.

4. It shall be free to each party to make such regulations as they shall judge necessary, for the conduct of their respective vessels of war, public and private, relative to the vessels, which they shall take, and carry into the ports of the two parties.

ARTICLE XXII

When the contracting parties shall have a common enemy, or shall both be neutral, the vessels of war of each shall upon all occasions take under their protection the vessels of the other going the same course, and shall defend such vessels as long as they hold the same course, against all force and violence, in the same manner as they ought to protect and defend vessels belonging to the party of which they are.

ARTICLE XXIII

If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance; and all women and children scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price.

ARTICLE XXIV

And to prevent the destruction of prisoners of war, by sending them into distant and inclement countries, or by crowding them into close and noxious places, the two contracting parties solemnly pledge them-

selves to the world and to each other that they will not adopt any such practice ; that neither will send the prisoners whom they may take from the other into the East Indies or any other parts of Asia or Africa, but that they shall be placed in some parts of their dominions in Europe or America, in wholesome situations ; that they shall not be confined in dungeons, prison-ships, nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs ; that the officers shall be enlarged on their paroles within convenient districts, and have comfortable quarters, and the common men be disposed in cantonments open and extensive enough for air and exercise, and lodged in barracks as roomly and good as are provided by the party in whose power they are for their own troops ; that the officers shall also be daily furnished by the party in whose power they are with as many rations, and of the same articles and quality as are allowed by them, either in kind or by commutation, to officers of equal rank in their own army ; and all others shall be daily furnished by them with such ration as they shall allow to a common soldier in their own service ; the value whereof shall be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners at the close of the war ; and the said accounts shall not be mingled with or set off against any others, nor the balances due on them be withheld as a satisfaction or reprisal for any other article or for any other cause, real or pretended, whatever. That each party shall be allowed to keep a commissary of prisoners of their own appointment, with every separate cantonment of prisoners in possession of the other, which commissary shall see the prisoners as often as he pleases, shall be allowed to receive and distribute whatever comforts may be sent to them by their friends, and shall be free to make his reports in open letters to those who employ him, but if any officer shall break his parole, or any other prisoner shall escape from the limits of his cantonment after they shall have been designated to him, such individual officer or other prisoner shall forfeit so much of the benefit of this article as provides for his enlargement on parole or cantonment. And it is declared, that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article ; but, on the contrary, that the state of war is precisely that for which they are provided, and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature and nations.

ARTICLE XXV

The two contracting parties have granted to each other the liberty of having each in the ports of the other Consuls, Vice-Consuls, Agents, and Commissaries of their own appointment, who shall enjoy the same privileges and powers as those of the most favoured nations; but if any such Consuls shall exercise commerce, they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted in the same place.

ARTICLE XXVI

If either party shall hereafter grant to any other nation any particular favour in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

ARTICLE XXVII

His Majesty the King of Prussia and the United States of America agree that this treaty shall be in force during the term of ten years from the exchange of the ratifications; and if the expiration of that term should happen during the course of a war between them, then the articles before provided for the regulation of their conduct during such a war shall continue in force until the conclusion of the treaty which shall restore peace.

This treaty shall be ratified on both sides, and the ratifications exchanged within one year from the day of its signature, or sooner if possible.

In testimony whereof, the Plenipotentiaries before mentioned have hereto subscribed their names and affixed their seals. Done at Berlin, the eleventh of July, in the year one thousand seven hundred and ninety-nine.

[Seal.] JOHN QUINCY ADAMS.

[Seal.] CHARLES WILLIAM COMTE DE FINKENSTEIN.

[Seal.] PHILIPPE CHARLES D'ALVENSLEBEN.

[Seal.] CHIRETIEN HENRI CURCE COMTE DE HAUGWITZ.

TREATY OF 1828¹

Concluded May 1, 1828; Ratification Advised by the Senate, May 14, 1828; Ratification again Advised and Time for Exchange of Ratification Extended by the Senate, March 9, 1829; Ratifications Exchanged March 14, 1829; Proclaimed March 14, 1829.

The United States of America and His Majesty the King of Prussia, equally animated with the desire of maintaining the relations of good understanding which have hitherto so happily subsisted between their respective States, of extending, also, and consolidating the commercial intercourse between them, and convinced that this object cannot better be accomplished than by adopting the system of an entire freedom of navigation, and a perfect reciprocity, based upon principles of equity equally beneficial to both countries, and applicable in time of peace as well as in time of war, have, in consequence, agreed to enter into negotiations for the conclusion of a treaty of navigation and commerce; for which purpose the President of the United States has conferred full powers on Henry Clay, their Secretary of State; and His Majesty the King of Prussia has conferred like powers on the Sieur Ludwig Niederstetter, Chargé d'Affaires of His said Majesty, near the United States; and the said Plenipotentiaries, having exchanged their said full powers, found in good and due form, have concluded and signed the following articles:

ARTICLE I

There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective States shall mutually have liberty to enter the ports, places, and rivers of the territories of each party, wherever foreign commerce is permitted. They shall be at liberty, to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing.

ARTICLE II

Prussian vessels arriving either laden or in ballast in the ports of the United States of America, and, reciprocally, vessels of the United States arriving either laden or in ballast in the ports of the Kingdom of Prus-

¹8 Stat. L. 378; Malloy's *Treaties*, etc., Vol. 2, p. 1496.

sia, shall be treated, on their entrance, during their stay, and at their departure, upon the same footing as national vessels coming from the same place, with respect to the duties of tonnage, light-houses, pilotage, salvage, and port charges, as well as to the fees and perquisites of public officers, and all other duties and charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever.

ARTICLE III

All kinds of merchandise and articles of commerce, either the produce of the soil or the industry of the United States of America, or of any other country, which may be lawfully imported into the ports of the Kingdom of Prussia, in Prussian vessels, may also be so imported in vessels of the United States of America, without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been imported in Prussian vessels. And, reciprocally, all kind of merchandise and articles of commerce, either the produce of the soil or of the industry of the Kingdom of Prussia, or of any other country, which may be lawfully imported into the ports of the United States in vessels of the said States, may also be so imported in Prussian vessels, without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been imported in vessels of the United States of America.

ARTICLE IV

To prevent the possibility of any misunderstanding, it is hereby declared that the stipulations contained in the two preceding articles are to their full extent applicable to Prussian vessels and their cargoes arriving in the ports of the United States of America, and, reciprocally, to vessels of the said States and their cargoes, arriving in the ports of the kingdom of Prussia, whether the said vessels clear directly from the ports of the country to which they respectively belong, or from the ports of any other foreign country.

ARTICLE V

No higher or other duties shall be imposed on the importation into the United States of any article the produce or manufacture of Prussia, and no higher or other duties shall be imposed on the importation into the Kingdom of Prussia of any article the produce or manufacture of the United States, than are or shall be payable on the like article being the produce or manufacture of any other foreign country. Nor shall any prohibition be imposed on the importation or exportation of any article the produce or manufacture of the United States, or of Prussia, to or from the ports of the United States, or to or from the ports of Prussia, which shall not equally extend to all other nations.

ARTICLE VI

All kind of merchandise and articles of commerce, either the produce of the soil or of the industry of the United States of America, or of any other country, which may be lawfully exported from the ports of the said United States in national vessels, may also be exported therefrom in Prussian vessels without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been exported in vessels of the United States of America.

An exact reciprocity shall be observed in the ports of the Kingdom of Prussia, so that all kind of merchandise and articles of commerce, either the produce of the soil or the industry of the said Kingdom, or of any other country, which may be lawfully exported from Prussian ports in national vessels, may also be exported therefrom in vessels of the United States of America, without paying other or higher duties or charges of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been exported in Prussian vessels.

ARTICLE VII

The preceding articles are not applicable to the coastwise navigation of the two countries, which is respectively reserved by each of the high contracting parties exclusively to itself.

ARTICLE VIII

No priority or preference shall be given, directly or indirectly, by either of the contracting parties, nor by any company, corporation, or agent, acting on their behalf or under their authority, in the purchase of any article of commerce, lawfully imported, on account of or in reference to the character of the vessel, whether it be of the one party or of the other, in which such article was imported; it being the true intent and meaning of the contracting parties that no distinction or difference whatever shall be made in this respect.

ARTICLE IX

If either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

ARTICLE X

The two contracting parties have granted to each other the liberty of having, each in the ports of the other, Consuls, Vice-Consuls, Agents, and Commissaries of their own appointment, who shall enjoy the same privileges and powers as those of the most favored nations. But if any such Consul shall exercise commerce, they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted, in the same place.

The Consuls, Vice-Consuls, and Commercial Agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or tranquillity of the country, or the said Consuls, Vice-Consuls, or Commercial Agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood, that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country.

ARTICLE XI

The said Consuls, Vice-Consuls, and Commercial Agents are authorised to require the assistance of the local authorities, for the search, arrest, and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges, and officers, and shall in writing demand said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews; and, on this reclamation being thus substantiated, the surrender shall not be refused. Such deserters, when arrested, shall be placed at the disposal of the said Consuls, Vice-Consuls, or Commercial Agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be sent to the vessels to which they belonged, or to others of the same country. But if not sent back within three months from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause. However, if the deserter should be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which his case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

ARTICLE XII

The twelfth article of the treaty of amity and commerce, concluded between the parties in 1785, and the articles from the thirteenth to the twenty-fourth, inclusive, of that which was concluded at Berlin in 1799, with the exception of the last paragraph in the nineteenth article, relating to treaties with Great Britain, are hereby revived with the same force and virtue as if they made part of the context of the present treaty, it being, however, understood that the stipulations contained in the articles thus revived shall be always considered as in no manner affecting the treaties or conventions concluded by either party with other Powers, during the interval between the expiration of the said treaty of 1799, and the commencement of the operation of the present treaty.

The parties being still desirous, in conformity with their intention declared in the twelfth article of the said treaty of 1799, to establish between themselves, or in concert with other maritime Powers, further provisions to ensure just protection and freedom to neutral navigation

and commerce, and which may, at the same time, advance the cause of civilization and humanity, engage again to treat on this subject at some future and convenient period.

ARTICLE XIII

Considering the remoteness of the respective countries of the two high contracting parties, and the uncertainty resulting therefrom, with respect to the various events which may take place, it is agreed that a merchant vessel belonging to either of them, which may be bound to a port supposed at the time of its departure to be blockaded, shall not, however, be captured or condemned for having attempted a first time to enter said port, unless it can be proved that said vessel could and ought to have learnt, during its voyage, that the blockade of the place in question still continued. But all vessels which, after having been warned off once shall, during the same voyage, attempt a second time to enter the same blockaded port, during the continuance of the said blockade, shall then subject themselves to be detained and condemned.

ARTICLE XIV

The citizens or subjects of each party shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise; and their representatives, being citizens or subjects of the other party, shall succeed to their said personal goods, whether by testament or ab intestato, and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods as would be taken of the goods of a native, in like case, until the owner may take measures for receiving them. And if question should arise among several claimants to which of them said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation and exempt

from all duties of detraction, on the part of the Government of the respective States. But this article shall not derogate in any manner from the force of the laws already published, or hereafter to be published by His Majesty the King of Prussia, to prevent the emigration of his subjects.

ARTICLE XV

The present treaty shall continue in force for twelve years, counting from the day of the exchange of the ratifications; and if twelve months before the expiration of that period, neither of the high contracting parties shall have announced, by an official notification to the other, its intention to arrest the operation of said treaty, it shall remain binding for one year beyond that time, and so on until the expiration of the twelve months, which will follow a similar notification, whatever the time at which it may take place.

ARTICLE XVI

This treaty shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Majesty the King of Prussia, and the ratifications shall be exchanged in the city of Washington, within nine months from the date of the signature hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed the above articles, both in the French and English languages, and they have thereto affixed their seals; declaring, nevertheless, that the signing in both languages shall not be brought into precedent, nor in any way operate to the prejudice of either party.

Done in triplicate at the city of Washington on the first day of May, in the year of our Lord one thousand eight hundred and twenty-eight, and the fifty-second of the Independence of the United States of America.

[Seal.] H. CLAY.

[Seal.] LUDWIG NIEDERSTETTER.

Opinions of the Attorneys General of the United States.

**CASE OF DESERTERS FROM THE PRUSSIAN FRIGATE
"NIOBE"¹**

The provisions of the treaty of May 1, 1828, between the United States and Prussia, for the arrest and imprisonment of deserters from public ships and merchant vessels of the respective countries, applies to public vessels sailing under the flag of the North German Union and deserters from such vessels.

ATTORNEY GENERAL'S OFFICE,

August 19, 1868.

Sir: I have considered the opinion of the examiner of claims in your department, transmitted to me under cover of your letter of the 20th ultimo, upon the question, how far the treaty of 1828, between the United States and Prussia, on the subject of the arrest and imprisonment by the local authorities of each country of deserters from the ships of war and merchant vessels of the other, is obligatory upon the United States in respect to deserters from the public and private vessels sailing under the flag of the North German Union.

The result of the victory of Sadowa and the negotiations of Nicholsburg was the territorial enlargement of Prussia, by the annexation of Hesse Cassel, Nassau, Hanover, Holstein, and Frankfort, and the foundation of a confederation or union between Prussia, thus enlarged in territory and population, and the North German States, under a constitution of government which gave the king of Prussia the presidency of the union, with power to declare war and conclude peace, make treaties with foreign States, accredit ministers and receive them, likewise the command, in war and in peace, of the entire army and navy of the union, with power, whenever the public safety is threatened, to declare martial law in any part of the union.

Prussia has a treaty of commerce and navigation with the United States, dated May 1, 1828, which provides, that the consuls of the respective governments "are authorized to require the assistance of the local authorities for the search, arrest, and imprisonment of the deserters from the ships of war and merchant vessels of their country."

In April last application was made, under this provision of the treaty

¹12 Op. Atty. Gen.

with Prussia, by the consul general of the North German Union in New York, to a United States commissioner, for a warrant for the arrest of eleven deserters from a public armed vessel, sailing under the flag of the union, which is styled by the minister of Prussia near this Government as "His majesty's frigate Niobe." The application of the consul general was refused by the commissioner, upon the general ground that the treaty stipulation referred to did not apply to vessels belonging to the North German Union. Baron Gerolt, the diplomatic representative here of the North German Union, protests against the refusal of the commissioner to issue a warrant for the arrest of these deserters; and hence the question is presented as to the validity of the objection urged by the commissioner to the right of the consular representative of the union to claim, on behalf of that government, in respect to deserters from one of its public armed vessels, the benefits of the treaty of 1828. The examiner of claims, in the opinion you have transmitted to me, has discussed not only this question, which is practically the only one that has been raised, so far as I am informed, by any events that have actually transpired calling for a consideration of our treaty relations with the States of the North German Union, but also the larger question as to the effect of the change in the political status and relations of the States consolidated and confederated with Prussia, upon the stipulations in our treaties of commerce and navigation with Prussia and those other States, in respect to the seamen deserting from their merchant vessels now sailing under a common national flag. I fully concur in the conclusion of the law officer of your department, that the commissioner at New York erred in refusing to issue a warrant for the arrest of the deserting seamen of the frigate "Niobe," but I will forbear at this time, with your permission, from giving an official opinion on the more doubtful and difficult questions which are discussed in the papers from your department now before me. It seems to me that a better occasion, perhaps, would be afforded for such a discussion when a case practically shall arise calling for the communication of the views of the Executive in regard to our treaties with the States of the North German Union to those judicial functionaries who, under our system of government, are intrusted with the due fulfillment and execution of those treaties on the part of the United States, in respect to the subjects-matter particularly discussed by the examiner of claims.

In regard to naval vessels of the North German Union, I am clearly of opinion that they are the ships of war of Prussia, within the

meaning of the treaty of 1828, and that deserters therefrom may be arrested by the proper local authorities of the United States, on the application of the proper consular officer of the union, pursuant to that treaty. I have referred incidentally to those provisions of the constitution of the union, which declare as follows:

The presidency of the union belongs to the crown of Prussia. The crown of Prussia is therefore entitled to represent the union as a nation, and to declare war and conclude peace in the name of the union, to form alliances and make other treaties with foreign States, accredit ministers and receive them.

The aggregate land forces of the union shall form a single army, which, in war and peace, is placed under the command of his majesty the king of Prussia, as commander-in-chief of the union.

The entire navy of the union is under the command of Prussia. Its organization belongs to the king of Prussia, who appoints its officers and officials, who take the oath of allegiance to him.

The construction and effect given by the examiner of claims to these provisions of the constitution of the German Union seem to be well supported by the course of reasoning pursued in his opinion, and I content myself at present with an expression of satisfaction with his view as applied to the case to which your attention has been directed by Baron Gerolt.

I would not be understood as entertaining any objection to the recommendation which the law officer of your department has deemed necessary to make looking to a review of our treaties with the States of the North German Union. The relations of the States of North Germany to one another and to the United States have been so considerably modified by the confederation of 1867, that many perplexing questions of reciprocal rights and obligations are likely to arise under those various treaties, and those questions it may be deemed the part of good statesmanship to avoid, by new treaties adapted to the present condition of the North German States.

I desire to remark, in conclusion, that under our system stipulations for the apprehension, within our jurisdiction, of deserters from foreign vessels, are executed by officers of the judicial department of the Government, in virtue of special authority conferred by acts of Congress. The questions arising upon the interpretation and effect of such treaties must, therefore, be peculiarly and primarily questions of judicial cognizance and consideration. The act of March 2, 1829, authorizes any court, judge, justice, or other magistrate, having competent power, to

issue warrants for the arrest, for examination, of seamen deserting from the vessels of any foreign governments with whom we have treaties for the restoration of deserting seamen, upon the application of the consular officers of such governments, with authority to deliver up such seamen to such consular officers. The subsequent act of February 24, 1855, confers upon commissioners of the circuit courts of the United States similar authority. The officers named in these statutes are not subject to the control or direction of the executive department of the Government.

Applications for the apprehension of deserting seamen are made to them directly by the consuls of foreign governments, and it may well occur that such applications are disposed of summarily, and before any opportunity can arise for intervention by the diplomatic representative of the foreign government, or the political department of our own Government. It may be of the highest consequence, that in a case involving the construction of such a treaty, full opportunity should be afforded both this and the foreign government for the presentation of their views upon the subject to the judicial functionary the exercise of whose jurisdiction has been invoked in the particular case. I apprehend that the learned commissioner, who refused to issue his warrant in the case of the seamen of the "Niobe," would have taken a different view of the treaty in question if his attention had been particularly called to those provisions of the constitution of the North German Union which I have referred to.

It may be proper, in case you agree with the view I have taken of that treaty in respect to public armed vessels under the flag of the North German Union, to make the district attorney of the United States at New York acquainted with your opinion, and to give such instructions to that officer as will enable him to make proper representation of that opinion to the commissioner or other judicial functionary in any future case of like character, and to advise your department of the occurrence of other cases arising under our treaties with the States of the North German Union that may call for renewed consideration of the subject by your department.

I am, sir, very respectfully,

Your obedient servant,

WM. M. EVARTS.

HON. WM. H. SEWARD,
Secretary of State.

TONNAGE DUTY¹

The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act of June 26, 1884, chapter 121, and entered in our ports, is purely geographical in character, inuring to the advantage of any vessel of any power that may choose to transport between this country and any port embraced by the fourteenth section of that act.

DEPARTMENT OF JUSTICE,

September 19, 1885.

Sir: Your communication of the 8th September, instant, with the inclosures therein referred to, has received my deliberate consideration, and I have the honor to submit, in reply, that I agree with you entirely in the interpretation you place on the fourteenth section of the act of Congress of the 26th June, 1884, entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes," and in your conclusion that the claims set up by the several powers mentioned by you are not founded.

The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act and entered in our ports is, I think, purely geographical in character, inuring to the advantage of *any* vessel of *any* power that may choose to fetch and carry between this country and any port embraced by the fourteenth section of the act.

I see no warrant, therefore, to claim that there is anything in "the most favored nation" clause of the treaty between this country and the powers mentioned that entitles them to have the privileges of the fourteenth section extended to their vessels sailing to this country from ports outside the limitation of the act.

Your able and comprehensive discussion of the subject renders it quite unnecessary for me to treat it at large.

I have the honor to be, your most obedient servant,

W. A. MAURY,

Acting Attorney-General.

THE SECRETARY OF STATE.

¹18 Op. Atty. Gen.

Annex

CORRESPONDENCE WITH THE LEGATION OF GERMANY IN WASHINGTON¹

No. 10

Mr. von Alvensleben to Mr. Bayard

[Translation]

IMPERIAL GERMAN LEGATION,
Washington, August 3, 1885 (Received August 5).

The undersigned, imperial German ambassador extraordinary and minister plenipotentiary, has, in accordance with the orders he has received, the honor to make the following very respectful communication to Hon. Thomas F. Bayard, Secretary of State of the United States.

By a law of June 26, 1884 (an act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes), section 14 (tonnage tax), it has been provided that vessels which sail from a port in North or Central America, in the West Indian Islands, the Bahama, Bermuda, and Sandwich Islands, to a port of the United States, shall pay in it, in place of the previous tonnage tax of 30 cents per ton a year, only 3 cents per ton, and not more than 15 cents a year, whilst vessels from other foreign ports have to bear a tax of 6 cents. This lowering of the tax to 3 cents has been granted to the favored countries—Canada, Newfoundland, the Bahamas, Bermuda, and West Indian Islands, Mexico, and Central America, including Panama and Aspinwall—unconditionally and without regard to the taxes, however relatively high, these countries on their side levy on American ships.

Article IX of the Prussian-American treaty of the 1st of May, 1828, which has been lately, in the correspondence between the cabinets of Berlin and Washington concerning the petroleum railroad rates as well as because of the Spanish-American treaty concerning the trade of Cuba and Puerto Rico, successively asserted by both Governments to be valid for all Germany, runs as follows:

If either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

¹*Foreign Relations*, 1888, part 2, pp. 1872-1878.

NOTE: The correspondence subsequent to the date of the Attorney General's opinion is also printed in order to complete the diplomatic side of the controversy.

The treaties which the United States in their time have concluded with the Hanse cities, Oldenburg and Mecklenburg, contain similar provisions. In accordance with the purport of these, Germany has an immediate claim, and without making any concession in return, to participate in the enjoyment of the tonnage tax abatement to 3 cents per ton, which has been unconditionally conceded.

The undersigned is, in accordance with the view of the Imperial Government, above set forth, directed to claim from the Government of the United States for German vessels the abatement of the tonnage tax to 3 cents per ton, and to propose, at the same time, the repayment of the tonnage tax which at the rate of 6 cents per ton has been overpaid since the law of the 26th of June, 1884, went into effect.

While the undersigned reserves for himself the right to make in due time proper proposals in reference to the abatement provided over and above this in the law of the 26th June of last year, dependent on certain conditions, and which (abatement) may in the future even exceed that of 3 cents per ton, according to the result of proper inquiries concerning the tonnage dues and other taxes, hereafter to be levied in German harbors, he has the honor to request very respectfully that the Secretary of State will kindly take the proper course, so that German shipping may as soon as possible participate in the unconditional favor, to which it is entitled, of an abatement of the tonnage tax to 3 cents.

The undersigned has the honor to await, very respectfully, your kind answer in reference to this matter, and avails himself, etc.

H. V. ALVENSLEBEN.

No. 11

Mr. Bayard to Mr. von Alvensleben

DEPARTMENT OF STATE,
Washington, November 7, 1885.

Sir: I had the honor to receive in due season your note of August 3 last, touching the application of the provisions of the fourteenth section of the shipping act, approved June 26, 1884, in respect of the collection of tonnage tax to vessels of Germany coming from ports of that country to ports of the United States, under the most favored nation clause of the existing treaty of 1828 between the United States and Germany.

The importance of the questions involved in the claim of the German Government and in like claims preferred by other governments has led to the submission of the entire subject to the judgment of the Attorney-General.

The conclusions of the Department of Justice, after a careful examination of the premises, are that—

The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act, and entered into our ports is, I think, purely geographical in character, inuring to the advantage of any vessel of any power that may choose to fetch and carry between this country and any port embraced by the fourteenth section of the act. I see no warrant, therefore, to claim that there is anything in "the most favored nation clause" of the treaty between this country and the powers mentioned that entitles them to have the privileges of the fourteenth section extended to their vessels sailing to this country from ports outside of the limitation of the act.

These conclusions are accepted by the President, and I have, accordingly, the honor to communicate them to you, as fully covering the points presented in your note of August 3 last.

Accept, etc.

T. F. BAYARD.

No. 12

Count Leyden to Mr. Bayard

[Translation]

IMPERIAL GERMAN LEGATION,

Washington, November 17, 1885 (Received November 19).

MR. SECRETARY OF STATE:

I have the honor most respectfully to acknowledge the receipt of your polite note of the 7th instant, whereby you inform me that the Department of Justice of the United States has decided in the matter of the application of the provisions of section 14 of the act relative to navigation of June 26, 1884, to German vessels, that the reduction of tonnage duties which is provided for a specified region is of a purely geographical character, and that the most favored nation clause can consequently have no application in this case.

I have the honor, at the same time, to inform you that I have brought the contents of your aforesaid note to the notice of the Imperial Government.

Accept, etc.,

COUNT LEYDEN.

No. 13

Mr. von Alvensleben to Mr. Bayard

[Translation]

IMPERIAL GERMAN LEGATION,

Washington, February 16, 1886 (Received February 18).

MR. SECRETARY OF STATE:

The Imperial Government has seen by your note of November 7,

1885, relative to the enforcement of the provisions of section 14 of the navigation act of June 26, 1884, that the United States Government rejects the application (made on the basis of the most favored-nation treaties now existing with Prussia and the German States) for equal rights with the States of North and Central America and the West Indies. This rejection is based on the ground that that exemption which is granted to all vessels of all powers sailing between the countries in question and the United States is purely geographical in its character, and can not, therefore, be claimed by other States in view of the most favored-nation clause.

I am instructed, and I have the honor most respectfully to reply to this, that such a line of argument is a most unusual one, and is calculated to render the most favored-nation clause wholly illusory. On the same ground, it would be quite possible to justify, for instance, a privilege granted exclusively to the South American States, then one granted also to certain of the nearer European nations, so that finally, under certain circumstances, always on the pretext that the measure was one of a purely geographical character, Germany alone, among all the nations that maintain commercial relations with America, notwithstanding the most favored-nation right granted to that country by treaty, might be excluded from the benefits of the act.

It can not be doubted, it is true, that on grounds of purely local character certain treaty stipulations between two powers, or certain advantages autonomically granted, may be claimed of third States not upon the ground of a most favored-nation clause. Among these are included facilities in reciprocal trade on the border, between States whose territories adjoin each other. It is, however, not to be doubted that the international practice is that such facilities, not coming within the scope of a most favored-nation clause, are not admissible save within very restricted zones. In several international treaties these zones are limited to a distance of ten kilometers from the frontier. From this point of view, therefore, the explanation given by the United States Government of section 14 of the shipping act can not be justified.

This law grants definite advantages to entire countries, among others to those situated at a great distance from the United States; these advantages are, beyond a doubt, equivalent to facilities granted to the trade and navigation of those countries, even if they do, under certain circumstances, inure to the benefit of individual vessels of foreign nations. It scarcely need be insisted upon that these advantages favor the entire commerce of the countries specially designated in the act, since they are now able to ship their goods to the United States on terms that have been artificially rendered more favorable than those on which other countries not thus favored are able to ship theirs.

The treaty* existing between Prussia and the United States expressly stipulates that—

*Treaty of 1828, Art. IX.

If either party shall hereafter grant to any other nation any particular favor in navigation or commerce it shall immediately become common to the other party, freely where it is freely granted to such other nation, or on yielding the same compensation when the grant is conditional.

Such a compensation, so far as the reduction of the tonnage tax to 3 cents is concerned, has not been stipulated for by the United States in the aforesaid shipping act. Germany is, therefore, *ipso facto*, entitled to the reduction of the tax in favor of vessels sailing from Germany to the United States, especially since, according to the constitution of the Empire, no tonnage tax is collected in Germany from foreign vessels; that is to say, no tonnage tax of the character of American tonnage taxes in the sense of section 8, paragraph 1, article 1, of the American Constitution, viz, those designed to pay the debts of the Government and to pay the expenses of the common defense and the general welfare.

As you remark in your esteemed note, Mr. Secretary of State, you have based your decision on an opinion of the Attorney-General. In opposition to this view, it will be seen by the printed decisions of the Secretary of Treasury, that the latter, in an opinion on this subject addressed to the Department of State under date of May 11, 1885, expressed the opinion that vessels sailing from Portugal to the United States are, indeed, entitled to the privileges granted by section 14 of the shipping act, on the ground of the most favored-nation treaty existing between the two nations. This opinion harmonizes in the main with the view entertained by the Imperial Government.

The Imperial Government entertains the hope, in view of the foregoing considerations, that the United States Government on reconsidering this matter will not maintain the position taken in the note of November 7, 1885, and that it will grant to German vessels sailing between the two countries the same privileges that have long been granted without compensation by the German Empire to American vessels.

In having the honor, therefore, hereby to reiterate the application made in my note of August 3, 1885, for the reduction of the tonnage tax to 3 cents in favor of vessels engaged in trade between Germany and the United States, I hope that the decision of the United States Government in this matter will be kindly communicated to me.

Accept, etc.,

H. V. ALVENSLEBEN.

No. 14

Mr. Bayard to Mr. von Alvensleben

DEPARTMENT OF STATE,
Washington, March 4, 1886.

Sir: With reference to previous correspondence on the subject, I have the honor to acknowledge the receipt of your note of the 15th ultimo, relative to the question as to the applicability of the most favored nation clauses of the treaties of Prussia and other German states and the United States to the provisions of section 14 of the act of Congress of June 26, 1884.

In reply I beg to inform you that your note will have consideration, it being sufficient for the present to observe that Germany admits that neighborhood and propinquity justify a special treatment of intercourse which may not be extended to other countries under the favored nation clause in treaties with them, and only appears to question the distance within which the rule of neighborhood is to operate.

Accept sir, etc.,

T. F. BAYARD.

No. 15

Mr. von Alvensleben to Mr. Bayard

[Translation]

IMPERIAL GERMAN LEGATION,
Washington, August 1, 1886 (Received August 2).

MR. SECRETARY OF STATE:

I had the honor duly to receive your note of the 4th of March last, whereby you informed me that my observations concerning the applicability of the most favored nation clause to section 14 of the act of Congress of June 26, 1884, would be taken into consideration, and in which, for the time being, you confined yourself, by way of reply, to one remark.

In the mean time an act of Congress entitled "An act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes," has been approved by the President of the United States under date of June 19, 1886 (Public—No. 85), and has thereby become a law. I have brought this act to the notice of the Imperial Government and have been instructed to state the view taken by that Government of this latest law and to ask your attention to its incompatibility with the stipulations of the treaty existing between Germany and the United States.

This act extends, in a measure, the power conferred upon the Presi-

dent by section 14 of the act of June 26, 1884, to diminish tonnage dues in certain cases.

According to the act of 1884 the President was authorized, only in the case of vessels coming from the ports of North and Central America, the West Indies, the Bahama, Bermuda, and Sandwich Islands, or Newfoundland, and entering ports of the United States, to reduce the duty of 3 cents per ton, which was imposed on such vessels, provided that the said duty exceeded the dues which American vessels were obliged to pay in the aforesaid ports.

A reduction of the duty of 6 cents, to which all vessels coming from other ports were subjected, was not allowable, even on the supposition in question.

Vessels from the aforesaid favored ports thus enjoyed a special preference in two ways: In the first place, they paid in all cases a duty of but 3 cents per ton, while vessels from other ports were obliged to pay 6 cents per ton; even these 3 cents could be remitted, either in whole or in part, provided that it could be shown that the duty paid by American vessels in the ports concerned amounted to less than 3 cents per ton, or that no such duty was levied in said ports. This latter privilege is, according to the new law, no longer to be exclusively enjoyed by vessels from the favored ports.

Likewise, vessels from other than the most favored ports may obtain a reduction or return of the duty of 6 cents to be paid by them per ton, provided that in the ports from which they have come American vessels pay less than 6 cents or no tonnage duty at all. The amount of the duty to be remitted is computed according to the amount of the duties levied in the ports of departure.

The new law is evidently based upon the idea of reciprocity. If this idea had been consistently carried out no objection could be made to it and the Imperial Government would have no further ground of complaint. This, however, is not the case, inasmuch as the new law grants special privileges, as did the old, to vessels from the above-mentioned ports, declaring that they, without any compensation on their part, shall pay but 3 cents per ton, even though a duty in excess of that amount is paid by American vessels in the ports concerned. The number of favored ports is even extended to those of South America bordering on the Caribbean Sea.

The Imperial Government has from the outset protested against this one sided privilege, which is in violation of the treaty stipulations of Germany with the United States. Since this privilege is not only not abolished by the new law, but is confirmed and even still further extended, the original attitude assumed by the Imperial Government towards the old law has been in no wise changed by the new act, and the Imperial Government must continue to protest against the violations of its treaty rights while maintaining the arguments contained in my note of February 15, 1886. As long as vessels from the ports of North and Central America pay but one-half the tonnage duty that is

levied upon vessels from German ports, without being required to furnish proof that less than 6 cents is exacted from American vessels in their ports, the Imperial Government will be obliged to maintain its claim for similar usage, viz, the exemption from furnishing such proof.

As is stated in my note of February 15, 1886, the Imperial Government is unable to regard as conclusive your principal argument, viz, that the privilege in question is of a purely geographical character, because the effect of this privilege is to benefit, in point of fact, the entire trade and navigation of those countries in which the ports in question are situated. No paramount importance can be attached (as is done by the United States Government) to the mere form in which this privilege is granted to particular countries.

I am therefore instructed, on the ground of the treaty right pertaining to the Imperial Government, to reiterate its previous claim that German ports shall be placed on a footing precisely similar to that of North and Central American ports, etc., and most respectfully to request you, Mr. Secretary of State, to favor me with the further reply which, in your note of March 4, you gave me to understand that I might expect from you.

Accept, etc.,

H. V. ALVENSLEBEN.

DUTY—IMPORTED SALT—TREATY WITH PRUSSIA¹

The treaty of May 1, 1828, between the United States and the Kingdom of Prussia, is to be taken as operative as respects so much of the German Empire as constitutes the Kingdom of Prussia. *Semble*, that it is not effective as regards the rest of that Empire.

The "most favored nation clause" in that treaty is not violated by paragraph 608 of the tariff act of August 27, 1894, laying a discriminating duty on salt imported from a country which imposes a duty on salt exported from the United States.

In case of conflict between a treaty and a subsequent statute, the latter governs.

The laws of a foreign country are not known to the Attorney-General, but are facts to be proved by competent evidence.

As to when the discriminating duty aforesaid applies to a country which imposes a duty on salt exported from the United States but lays a countervailing excise tax on domestic salt. *Quære*.

DEPARTMENT OF JUSTICE,

November 13, 1894.

Sir: I have the honor to acknowledge your communication of October 27, asking my official opinion upon the question whether salt

¹21 Op. Atty. Gen. 80.

imported from the Empire of Germany is dutiable under paragraph 608 of the tariff act of August 27, 1894. That paragraph, which puts salt in general on the free list, contains the following proviso:

Provided, That if salt is imported from any country whether independent or a dependency which imposes a duty upon salt exported from the United States, then there shall be levied, paid, and collected upon such salt the rate of duty existing prior to the passage of this act.

As Germany imposes a duty upon salt exported from the United States, German salt is apparently subject to the proviso just quoted. The German ambassador, however, claims it is entitled to come into the United States free on two grounds.

One is the "most favored nation clause," so called, which is embodied in the following provisions of the treaty of May 1, 1828, between the United States and Prussia:

ARTICLE V

No higher or other duties shall be imposed on the importation into the United States of any article the produce or manufacture of Prussia, and no higher or other duties shall be imposed on the importation into the Kingdom of Prussia of any article the produce or manufacture of the United States than are or shall be payable on the like article being the produce or manufacture of any other foreign country. * * *

ARTICLE IX

If either party shall hereafter grant to any other nation any particular favor in navigation or commerce it shall immediately become common to the other party freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

It should be noted that while this treaty is to be taken as operative as respects so much of the German Empire as constitutes the Kingdom of Prussia no facts or considerations with which I have been made acquainted justify the assumption that it is to be taken as effective as regards other portions of the Empire. Neither am I informed whether the German salt, for which free admission into this country is demanded, is a product or manufacture of Prussia proper, or of some other part or parts of the German Empire.

If it be assumed, however, for present purposes, that the treaty of 1828 binds the United States as regards all the constituent parts of

the German Empire, the claim of the German ambassador, founded upon the "most favored nation clause," must be pronounced untenable for at least two conclusive reasons.

In the first place, the "most favored nation clauses" of our treaties with foreign powers have from the foundation of our Government been invariably construed both as not forbidding any internal regulations necessary for the protection of our home industries, and as permitting commercial concessions to a country which are not gratuitous, but are in return for equivalent concessions, and to which no other country is entitled except upon rendering the same equivalents. Thus, Mr. Jefferson, when Secretary of State in 1792, said of treaties exchanging the rights of the most favored nation that "they leave each party free to make what internal regulations they please, and to give what preference they find expedient to native merchants, vessels, and productions." In 1817 Mr. John Quincy Adams, acting in the same official capacity, took the ground that the "most favored nation clause only covered gratuitous favors and did not touch concessions for equivalents expressed or implied." Mr. Clay, Mr. Livingston, Mr. Evarts, and Mr. Bayard, when at the head of the Department of State, have each given official expression to the same view. It has also received the sanction of the Supreme Court in more than one well-considered decision, while in *Bartram v. Robertson* (122 U. S. 116), Mr. Justice Field, speaking for the whole court, expounded the stipulations of the "most favored nation clause" in this language (p. 120):

They were pledges of the two contracting parties, the United States and the King of Denmark, to each other, that, in the imposition of duties on goods imported into one of the countries which were the produce or manufacture of the other, there should be no discrimination against them in favor of goods of like character imported from any other country. They imposed an obligation upon both countries to avoid hostile legislation in that respect.

This interpretation of the "most favored nation clause," so clearly established as a doctrine of American law, is believed to accord with the interpretation put upon the clause by foreign powers—certainly by Germany and Great Britain. Thus, as the clause permits any internal regulations that a country may find necessary to give a preference to "native merchants, vessels, and productions," the representatives of both Great Britain and Germany expressly declared, at the International Sugar Conference of 1888, that the export sugar bounty of one

country might be counteracted by the import sugar duty of another without causing any discrimination which could be deemed a violation of the "most favored nation clause." So both Germany and Great Britain acquiesced in the position of the United States, that our treaty with Hawaii did not entitle those nations to equal privileges in regard to imports with those thus obtained by the United States, the privileges granted to the United States being in consideration of concessions by the United States which Germany and Great Britain not only did not offer to make, but, in the nature of things, could not make.

If these established principles be applied to the case in hand but one result seems to be possible. The form which the provisions of our recent tariff act relating to salt may have assumed is quite immaterial. It enacts, in substance and effect, that any country admitting American salt free shall have its own salt admitted free here, while any country putting a duty upon American salt shall have its salt dutiable here under the preexisting statute. In other words, the United States concedes "free salt" to any nation which concedes "free salt" to the United States. Germany, of course, is entitled to that concession upon returning the same equivalent. But otherwise she is not so entitled, and there is nothing in the "most favored nation clause" which compels the United States to discriminate against other nations and in favor of Germany by granting gratuitously to the latter privileges which it grants to the former only upon the payment of a stipulated price.

In the next place, even if the provisions of our recent tariff act under consideration could be deemed to contravene the "most-favored-nation clause" of the treaty with Germany—as they can not be for the reasons stated—the result will be the same. The tariff act is a statute later than the treaty and, so far as inconsistent with it, is controlling. The principle is too well settled to admit of discussion, and if any relief from its operations is desirable it can be obtained only through proper modifying legislation by Congress.

While the first proposition of the German ambassador proceeds upon the basis that Germany does levy an import duty on American salt, his second proposition is that in reality it does not do so. The duty, it is said, should be regarded as in fact an internal excise tax, since a tax equivalent to the duty is levied upon all salt in the country whenever and however it appears, and is the same upon salt produced in Germany as upon salt coming from the United States. It is matter of convenience merely that the tax upon American salt is collected

immediately upon its arrival in port. In short, the claim is that there is no discrimination against American salt, which is the evil our statute aims to prevent; that American salt and German salt are in reality treated on a footing of entire equality.

The validity of this proposition I do not think I am in a position to judge of, for want of sufficient data. The laws of Germany I do not and can not be expected to know, and, like other foreign laws, are facts to be proved by competent evidence. The statement respecting them made by the German ambassador in a communication to the Secretary of State (copy of which you inclose) are undoubtedly correct, but they leave me in doubt upon what seems to me a vital point, viz, whether the internal excise tax on salt referred to is imperial in character—that is, is levied by and belongs to the Imperial Government—or is local, and is levied by and belongs to one or more constituent states of the Empire. If it is of the latter character, it probably can not be considered in relation to the matter in hand any more than a like domestic tax of any one or more of the States of the United States could be considered in the same relation. If, however, it could be considered under any circumstances, then it is obviously material to know whether such tax is levied by all of the constituent states of the Empire, without exception, and actually or necessarily at the same rate.

As at present advised, therefore, salt imported from the Empire of Germany is, in my judgment, legally dutiable under the statute above quoted.

Respectfully, yours,

RICHARD OLNEY.

THE SECRETARY OF THE TREASURY.

Decisions of Federal Courts

THE BARK ELWINE KREPLIN¹

*Seamen's Wages.—Desertion.—Imprisonment on Shore.—Consul.—
Treaty With Prussia.—Jurisdiction.—Parties.—Practice.—Minor.
—Executive Recognition.*

A Prussian bark, with a crew whose term of service had not expired, was laid up at Staten Island, on account of the war between Prussia and France. A difficulty arose between the captain and the crew, and they demanded leave to go and see the consul. This the captain refused to allow, but agreed that one of them, named L., might go. They insisted that they would all go, and the captain went ashore to get the aid of the police. After he had gone, the crew informed the mate that they were going to see the consul, and went ashore, without serious objection from the mate. The captain, returning, was told by the mate that the men had gone ashore, and high words passed between them, which resulted in the mate's saying that he would go too, and he went ashore, without objection from the captain. The captain, with a police officer, overtook the crew, and all hands went before a police justice, where the captain made a complaint against the mate and the crew for mutiny and desertion. The justice informed the captain that he had no jurisdiction, but he directed a policeman to take the men into custody, and they were locked up. The captain then went before the Prussian consul, and made complaint, requesting that the crew be punished, and that they be kept in custody preliminarily, and stating that he could not receive the mate on board again. The consul then issued a requisition to a commissioner of the Circuit Court of the United States, stating that the men had deserted, and asking for a warrant to arrest the men, and, "if said charge be true," that they be detained until there should be an opportunity to send them back. The requisition the captain took to the police justice, who thereupon, without examination, committed all the men to the county jail, where they lay for ten days. On the direction of the consul, they were then released, and came to the consul's office, where they were advised to go to the ship, and ask the captain for their wages. Some of them went, and the captain agreed to meet the crew at the consul's office next day. He came there, but the parties failed to meet each other, and thereafter the seamen executed assignments of their wages to the mate,

¹8 Fed. Cases, 592 (Case 4,427) ; 4 Benedict, 413.

NOTE.—This case was reversed by the Circuit Court, on the ground that this Court was prohibited, under the treaty with Prussia, from exercising jurisdiction. An application was made to the Supreme Court for a *mandamus*, to compel the Circuit Court to pass upon the merits, but was denied. Fed. Cases (No. 4426), vol. 8; 588.

but without consideration, and he filed this libel against the vessel, to recover the wages of all. The captain was part owner of the ship. He defended the suit, and claimed that the men had forfeited their wages by desertion; that they had agreed in the articles not to bring the suit; and that the Court, under the treaty between the United States and Prussia, had no jurisdiction.

Held, That, as to the mate and L., there could be no pretence of desertion, for they left the vessel with the captain's consent;

That, as the other seamen only left the ship, without taking their clothes, to go and see the consul, the charge of desertion was not made out against them;

That the conduct of the captain, in imprisoning the men, was unlawful, and sufficient to dissolve the contract of the mariners;

That no law permits the imprisonment of deserters in our jails, except on proof of the facts before a competent tribunal;

That the men were not prevented from bringing this suit by the clause in the article referring to that provision of the German mercantile law, that "the seaman is not allowed to sue the master in a foreign port," because this is not a suit against the master, and the master having, by his unlawful conduct, absolved the men from their agreement, had absolved them from this portion of it with the rest;

That the clause in the treaty between the United States and Prussia, that "the consuls, vice-consuls, and commercial agents shall have the right, as such to act as judges and arbitrators, in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless, &c., &c.," was not sufficient to oust this Court of its jurisdiction over this controversy.

Whether this clause has any application to suits *in rem—quære*.

That the Prussian consul had not acted in this matter as judge or arbitrator, which words must be taken in their ordinary sense, implying investigation of facts upon evidence, the exercise of judgment as to their effect, and a determination thereon;

That the consul is not a Court, and neither his record nor his testimony is conclusive on this Court;

That, as the consul, though really appointed as consul of the North German Union, was recognized by the Executive Department as consul of Prussia by virtue of such appointment, the action of the Executive was binding on the Court, and he must be held to be the Prussian consul;

That the seamen might file a petition to be now made colibellants, and on such petition being filed, and the cancellation of their assignments to the mate, they would be entitled to decrees for their wages.

In admiralty, minors are allowed to sue for wages in their own name.

BENEDICT, J. This is a cause of subtraction of wages, instituted by Max Newman, who was the chief mate of the Prussian bark *Elkvine Kreplin*, to recover the sum of \$173, being the amount of his wages

earned in the capacity of chief mate of that vessel; and also the sum of \$1,158, which is the aggregate amount of the wages of the crew, which he claims to recover as assignee of the seamen. A statement of the facts in proof is necessary to an understanding of the many questions raised.

The time of service and rates of wages are not disputed. The libel concedes the term of service for which the men were shipped to have been two years, which has not yet expired.

This term of service being admitted in the libel, is to be taken as proved, although it is not entirely clear from the agreement itself that such was its legal effect. In the prosecution of her voyage, the brig arrived in this port, and, war having broken out between Prussia and France, she was compelled to lay up here to wait for peace. She was accordingly laid up at Staten Island, and while there the difficulty arose which gave rise to the present litigation. It appears that on the morning of the 1st of August, 1870, before breakfast, the master undertook to chastise the cabin boy, in the cabin. The boy's cries being heard by the crew, who were at work on deck, they went in a body into the cabin, and challenged the right of the master to chastise the boy. The master thereupon desisted, and the men returned to their work on deck. The master soon followed, and an altercation ensued between the master and crew, in which various complaints were made, and some vile epithets applied to the master by the mate, who was not in the cabin with the men, but in the altercation on deck took part with the crew. During the dispute, the men, in a body, demanded permission to go before the consul with their complaints. Permission was given to one named Lutte, and perhaps to Martens also. The permission to Lutte is conceded by the master, but permission to Martens is denied. Upon permission being given to Lutte, the crew cried out, "We will all go." When the dispute ended, the captain went to his breakfast, and after breakfast went ashore, to obtain, as he says, the aid of the police, on account of the mutinous condition of the crew. After he was gone, the crew, having finished cleansing the decks, and eaten their breakfast, dressed and informed the mate, then in command, that they were going to the consul, and went ashore. No objection was made by the mate, beyond a suggestion that they had better wait till the captain returned. Soon after the men had left, the captain returned, but without any police, and was informed by the mate that the crew had gone ashore. Words thereupon passed between the

captain and mate, which resulted in the mate's saying, "I will go, too," whereupon he also left, without any objection by the master. On leaving the ship, the mate proceeded to the ferry leading to New York city, where the office of the Prussian consul is located. The rest of the crew appear to have followed the carpenter, who went to the police station to enter a complaint against the master for beating the boy, in whom the carpenter, doubtless, took more interest than the others, as he came from the same town in Germany. The master soon appeared at the police station, and shortly after at the ferry house, with a policeman. The mate, at their request, accompanied them to Justice Garret, a police justice of the village of Edgewater. There the captain made a complaint against the whole crew, including the mate, for mutiny and desertion, but was informed by the justice that he was without jurisdiction, and that application must be made to the United States courts. The justice, however, was afterwards induced to direct a policeman to take the men into custody, if he would do so at his own risk. This the policeman did, and the mate and men were then locked up.

The master next proceeded to the consul's office, and there made complaint in writing, of which a protocol was made, describing the occurrence of the morning on board the ship, and stating that the men were then in custody on Staten Island, and ending as follows: "I request of the consul-general the punishment of the entire crew, especially of the mate, Newman, who has instigated the complot. Since my life is not safe, I request that the entire crew be kept in custody preliminarily; and, under existing circumstances, I can not again take the mate on board."

The consul thereupon issued a requisition, the substance of which has been proved, in the absence of the original. To whom this requisition was addressed is not certain. Justice Garret thinks that it was addressed, "To any marshal or magistrate of the United States;" but it was written on a blank, which was addressed in print, "To the Commissioner of the Circuit Court of the United States for the — District of New York," and it is not shown that the blank address was altered or filled up. This requisition, after referring to the treaty with Prussia stipulating for the return of deserting seamen, and authorizing the consul to require the assistance of the local authorities for the search, arrest and imprisonment of deserters, represented that these seamen, naming them, and including the mate and Lutte, had deserted from

this vessel on that day; that the consul made application for a warrant to the marshal of said district to cause the men to be arrested, and "if said charge be true, that they be detained at the consul's expense until there should be an opportunity to send them back. No action was taken by the consul in regard to the master's complaint, except to deliver this requisition to the master, who, instead of presenting it to a U. S. Commissioner, took it to Justice Garret, the next morning, and thereupon Justice Garret, without examination, committed all the men to the common jail of Richmond County, his commitment stating that it was upon the complaint of the master for desertion, and containing no allusion to the consul's requisition.

On the 9th of August the master desired a release of some of the men, and the consul appears to have directed a release of them all, but no order for their return to the ship was made by the consul or asked for by the master, nor was the production of the men before the consul directed.

On the 11th of August, two policemen took the mate and three of the men from the jail to the consul's office, and were then directed to release them, and the men were advised to go on board and persuade the master to pay them their wages. The next day the remaining four were released from jail, and during the day all the men appeared at the consul's office. They were again advised to go to the ship and ask the master for their wages, but they had no money to pay their ferriages from New York to Staten Island. By putting all their means together, however, enough was found to pay the ferriage of three. Accordingly, the mate, the carpenter and Lutte went to the ship and saw the master. The mate testifies that the captain promised to pay him and appointed the next day to meet him at the consul's.

The master admits making the appointment, and that he gave the mate his navigation book and entered in it the credits to date, but denies the promise to pay him. As to what actually took place at this interview, the witnesses differ, but the result was an arrangement to meet at the consul's office the next day. This meeting never took place. The men and the master appear to have been at the consul's during that day, but they failed to meet, although the master says that as he came down from the consul's he saw Torriff and Reischoff, two of the crew, whom he asked to return to the ship, and they laughed at him and said, "No! Not a bit of it." Subsequently, this action was commenced. Upon these facts it is contended that these seamen are

not entitled to recover their wages, admitted to have been earned in the service of this vessel, on several grounds.

Upon the merits, it is said that the wages have been forfeited by desertion.

The charge of desertion against the mate has no foundation. He left the ship openly without objection from the master, without taking any of his clothes, and with a remark, which, under the circumstances, was a notification that he was going to see the consul. He was shortly arrested and cast into prison and there kept during ten days of the extremely hot weather of last August, and then let out without a request or suggestion that he return to the vessel. Indeed, the master had expressly declared that he should not return. It is vain to contend that these facts present any of the features of desertion, so far as the mate is concerned. With regard to Lutte, the case is still stronger, for the master concedes that Lutte asked and obtained of him permission to go to the consul. He also was in a similar manner imprisoned as a deserter. With regard to the other seamen the case is simply one of leaving the ship without permission. "It has been uniformly held that it is not desertion, for the seamen to leave the vessel against orders to go before the consul at a foreign port to complain of their treatment." (1 Pars. Mar. Law, 470, note.) In this case the men did not take their clothes. When the master gave permission to Lutte to go to the consul, they announced their intention to go too. When they left they informed the mate, who was then in command (*The Union*, Bl. & H. 563), that they were going to see the consul. Upon the evidence, I find nothing to justify the master in supposing that the men were not going to the consul, and would not return to the ship at nightfall, and yet they were all at once arrested and cast into prison: and, so far as appears, without any prior request that they return to the ship. To hold such a leaving of the ship to be desertion is impossible. But it is said that when released from jail they refused to return to duty, and are therefore deserters. There is some evidence to this effect, but it is loose, and, upon a consideration of all the evidence, I am satisfied that the master never in fact communicated to the men either an intention to forfeit their wages or a desire to have them again in his service. As to the mate, he had expressly refused to have him on board. As to Kruise and Reischhoff, he had, before the difficulty, given them to understand that they would be permitted to leave. He was half owner. His vessel was laid up to

await the result of a great war—only the services of watchmen were required on board—and he had engaged two other men for that duty. He had, therefore, no reason to desire the return of the men, and, I am satisfied, did not desire it, although he may have been quite willing to make out a case of desertion, in the hope of saving the very considerable sum due the men; but his action was such as to lead the men to suppose that their leaving the service of the ship was acquiesced in, and such, it appears, was the impression formed by the consul, for he says he told the men he was sure the captain would pay them their wages. I am, therefore, of the opinion that the connection of the men with the ship was severed by mutual consent, and consequently, they are entitled to their wages.

But if this be not so, I am of the opinion that the conduct of the master, in imprisoning these men, was unlawful, and sufficient to dissolve the contract of the mariners; and I apply to the case of these foreign seamen in an American port the same rule which our Courts have applied in cases of the imprisonment of American seamen in foreign ports. The rule is stated as follows:

“The practice of imprisoning disobedient and refractory seamen in foreign jails is one of doubtful legality. It is certainly to be justified only by a strong case of necessity. It should be used as one of safety, rather than discipline, and never applied as punishment for past misconduct.” (*The Mary*, Gilpin, 31–32.) In *Jordan v. Williams* (1 Curt. C. Cls. 81), it is stated as settled, that it is not one of the ordinary powers of a shipmaster to imprison his men on shore.

The imprisonment inflicted on these men was without justification. The only excuse for it is the occurrence on the morning of the 1st of August, above detailed, which was not a very serious matter. The men were undoubtedly wrong in appearing in the cabin, and calling in question the master's right to punish the boy; for which, perhaps, there is some palliation in the fact that, while the crew doubtless knew that by the Prussian laws corporal punishment of seamen is not permitted, they may not have known that, by the same laws, “ship boys are subject to the parental chastisement of the master.” The punishment of the boy, in this instance, was not cruel, and the men could not complain of some punishment inflicted on them for their appearance in the cabin, and their disrespectful language afterwards on deck. But there was nothing alarming in the temper of the crew; there had been no difficulty with them before this, and nothing occurred on this

day which any master of order, judgment and firmness would not have easily dealt with. No weapons were shown, no blows struck, no threats made, except that of reporting to the consul, and, if punishment was thought necessary, it should have been inflicted on board, and not by imprisonment in a foreign jail.

Neither does the master stand excused, if it be considered to have been shown that he really thought the men had left the ship, with intent to desert, for his whole conduct was unlawful. No law permits the imprisonment of deserters in our jails, except on proof of the facts before a competent tribunal. The Act of March 2d, 1829, which is the only statute enacted to render effective the provisions of Art. 11 of the treaty with Prussia, requires an application by the consul, with preliminary proofs, before a magistrate having competent jurisdiction, and the warrant of such magistrate for the arrest. The seamen can not be surrendered to the authority of the consul, until an examination be had before the magistrate, and the statement that the seaman is a deserter found to be true. And the arrest and detention of the seamen, in such cases, is not for punishment, but simply for safe-keeping until he can be sent back. Here the men were imprisoned, in the first instance, for a day and a night, upon the request of the master, without any of the preliminary proofs required by the statute, and without the interposition of the consul. And when, on the next day, the consul issued the requisition for an examination before a U. S. Commissioner, the master took it to the police justice, where it was used, apparently by way of inducement, for the imprisonment was then continued for some ten days, upon the complaint of the master, and not by virtue of the requisition. This imprisonment was, in law, the act of the master. He caused it to be done by a magistrate, known to him to be without jurisdiction. Nor can he protect himself by saying that he acted under the direction of the consul. The consul made no requisition upon the police justice, and never requested that officer to imprison the men, and his requisition is not alluded to in the commitment. He did direct somebody to release them, but it is not shown what person, other than the captain and the policeman, he so directed. It is also true that he paid the jail fees to the jailer, but there is evidence showing that his payment was for the account of the master.

If it be true, that a master is not responsible for an imprisonment inflicted by competent authorities, under the order of a consul (*The*

Coriolanus, Crabbe's R. 241; *Wilson v. The Mary*, Gilpin, 31; *Jordan v. Williams*, 1 Curt. C. Cls. 82), it is also true that he is responsible for an imprisonment inflicted, at his request, by a police justice without jurisdiction in the premises (*Snow v. Wope*, 2 Curt. C. Cls. 304).

In every aspect, then, the conduct of the master in respect to these men was unlawful, and, it appears to me, without excuse. Three of the men who have appeared before me, are men of intelligence, and of truthful appearance. The mate appears quite the equal of the master, and is, in fact, his connection by marriage. The difficulty arose in a port where there was every opportunity for protection, and for lawful investigation, and there was nothing requiring haste. Such an imprisonment, under such circumstances, I consider sufficient, within the principles of the adjudged cases, to dissolve the marines' contract, and sever the connection between the men and the vessel.

But it is said that the men contracted not to sue in a foreign country, and, therefore, this action can not be maintained. This position is based upon the words of the ship's articles or muster roll, which declare that "the seamen hire themselves on the above-mentioned vessel in accordance with the legal regulations printed in the book of Navigation." The book of Navigation referred to is a book which is furnished to every Prussian seaman, and which contains the name of the holder, with a description of his person, and memorandum of every shipment and every discharge of the holder, signed by the mustering authorities. The book contains also a printed appendix, where may be found certain extracts from the German mercantile law, among which extracts is this provision: "The seaman is not allowed to sue the master in a foreign court." Assuming that this provision of law is incorporated into the agreement, by the words used in the articles, and, therefore, to be considered as part of the contract, which is not entirely clear, the first answer is, that the provision, by its express terms, is made to relate to suits against the master, which this is not. Another answer is, that the master having, by his unlawful conduct in violation of his contract, absolved the men from their agreement, has absolved them from the whole of it, and this portion with the rest (*Schulenburg v. Wessels*, 2 E. D. Smith, R. 71).

In the English courts, a foreign statutory prohibition of this description had been considered not enforceable, unless incorporated as part of the contract (MacLachlan on Shipping, 226). In the American courts, it has been held that such a provision in the contract will not

be enforced, "where the voyage, as respects the seamen, is put an end to" (*The St. Oloff*, 2 Pet. Ad. 415); "where the interests of justice demand it" (*Barker v. Kloskyster*, Abb. Ad. 408); and "where the seamen are left destitute by an improper discharge." (*Id.* p. 408.)

Again, it is said that this is a Prussian vessel, and therefore the court is without jurisdiction in the premises by reason of the treaty between the United States and Prussia, ratified in 1828 (8 Stat. at Large, 382). This position, which has been urged upon my consideration with earnestness and ability, has received my careful consideration. The provision of the treaty is as follows: "The consuls, vice-consuls and commercial agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or tranquillity of the country, or the said consuls, vice-consuls or commercial agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country."

In considering the effect of this treaty in the present case, I remark first, that its language does not precisely cover an action *in rem* like the present.

Such an action is more than a mere difference between the master and the crew. It involves the question of lien upon the ship and her condemnation and sale to pay the same. In the absence of any express words, it is hard to infer that it was intended to confer upon consuls and vice-consuls, the power to direct a condemnation and sale of a ship—a proceeding which brings up, for determination, many questions besides those relating to seamen. Moreover, the statute of August 8, 1846, which was passed to render effective this provision of this treaty, confers upon the Commissioners of the Circuit Court full power, authority and jurisdiction to carry into effect the award, arbitration or decree of the consul, and for that purpose to issue remedial process, mesne and final, and to enforce obedience thereto by imprisonment. It certainly can not be supposed that it was the intention to give to the Commissioners of the Circuit Court power to make a decree *in rem*, and direct the sale of a ship. This position, that the

treaty is not applicable to the present case because it is a proceeding *in rem*, which did not strike me with much force upon the argument, has gained strength in my mind by reflection, and I confess that I am now inclined to the opinion that it is well taken; but I do not intend to rest my determination upon it. Nor do I discuss the position that the treaty was not intended to apply to any difference, except personal differences, between the master and the seamen alone, such as assaults and the like, and does not cover differences as to wages, to which the owners as well as the ship are always real parties.

But I pass on to consider whether the effect of this treaty is to prevent the Courts of Admiralty of the United States from taking cognizance of any action brought by seamen to recover wages earned by them on board of a Prussian vessel. At the outset, it appears strange to hear it contended that the jurisdiction of the District Courts of the United States is thus to be limited, because of an agreement arrived at between Prussia and our Government, as to the jurisdiction of our own courts. Courts are created and their jurisdiction fixed by the law-making power; and the extent of their jurisdiction does not appear to be a fit subject of an agreement with a foreign power. If, in any case, the powers exercised by the courts become a subject of discussion between our Government and a foreign nation, and any limitation of the jurisdiction, already conferred by law, be found to be desirable, the natural, if not the only way of accomplishing such a result would be by the action of the law-making power, instead of the treaty-making power. It appears reasonable, therefore, at least to require that an intention to accomplish such a result by a treaty, should be manifested by express words. The treaty under consideration contains no such definite provision. It simply declares that the consuls shall have the right to sit as judges and arbitrators in certain cases, without the interference of the local authorities, which is a very different thing from saying that the courts of the United States shall not have jurisdiction in such cases. Furthermore, the law-making power established the District Courts of the United States and the jurisdiction thereof, and gave to them, in civil cases of admiralty and maritime jurisdiction, all the judicial power vested in the national Government by the Constitution; and it is not to be lightly supposed that the President, acting with the advice of the Senate as the treaty-making power, has undertaken to repeal, *pro tanto*, an existing law relating to the jurisdiction of the courts, and to remove from the juris-

diction of the District Courts certain classes of actions, and that by reason of their subject-matter, for the provision in this treaty is not confined by its language to Prussian subjects, but applies to all seamen on Prussian vessels without regard to their nationality. It seems to me that no such intention should be imputed to the treaty, if any other can be discerned—and another, and a reasonable intention can be discerned when we consider, in connection with the treaty, the well-known practice of maritime courts in respect to actions brought by seamen to recover wages earned on foreign vessels. Such actions, Courts of Admiralty have long been accustomed to entertain, or to decline, in their discretion. Ordinarily, in the exercise of a sound discretion, they have refused to entertain such actions, when the consul of the foreign power shows reasonable grounds for such declination, and his willingness to determine the matter in controversy. (*The Nina*, W. & B. Ad. 180, n.)

Having this practice in view it may be well inferred, from the language used in this treaty, that the object of the provision in question was to insure, so far as possible, without a repeal of the existing law, a declination of such actions by the courts in all cases where the consul has acted, and perhaps also where he expresses a willingness to act, as judge or arbitrator between the parties—thus giving to the foreign nation the guarantee of this nation for the continued exercise, by the courts, of that sound discretion which has ordinarily been exercised, and committing the nation to answer any demand which might arise from any omission by its courts to exercise such a discretion in this class of cases. Such an effect given to the treaty appears to my mind to be reasonable and sufficient to accomplish all that was intended. To hold that the treaty repeals *pro tanto* the act establishing the District Courts, and ousts them of all jurisdiction in this class of cases, would permit consuls to refuse to act, and at the same time withhold from seamen—and American citizens, it may be—all right of resort to the courts of the land. It would give opportunity for great frauds, and open a wide door for the oppression of a class of men entitled by the maritime law, above all others, to the protection of maritime courts. Of the use which would be made of such a construction of the treaty, the present attempt, in violation of all law, to appropriate some \$1,100 of the earnings of these men, is not a bad illustration.

Under the view of the treaty above indicated, I am thus brought to

consider whether the evidence sustains the averment, that the consul-general of Prussia has already cognizance as a judge or arbitrator of the demand of these seamen, and makes out a case where, for that reason, this court should decline to entertain the action.

The words "judge and arbitrator," used in the treaty, must be taken in their ordinary significance. They imply investigation of the facts upon evidence, the exercise of judgment as to the effect to be given thereto and a determination therefrom. And the use of these words indicate an intention not to deprive the seamen of a full and fair hearing of their cause and a decision thereof. If such a hearing had been given these men by the consul, the case would have been different. But here nothing has been done which can in any fair sense be called a hearing of the cause. The consul has not even gone through the form of sitting as judge or arbitrator in respect to the demands of these men. He examined no witnesses, he did not bring the parties before him, and he made no definite determination whatever. The men say that he refused to hear their story at all. The mate swears that he demanded to see the captain's charge against him, and he was refused. The vice-consul denies this, and says that he did listen to the men, and because they admitted themselves deserters, there was nothing to do but to tell them that they had forfeited their wages, which he did. But he can not say what persons admitted having deserted, and on cross-examination he shows that the admission was simply an admission by some, he does not know whom, of having left the vessel without leave. He admits having urged the men to go and see the captain, and expressed confidence that if they spoke civil the master would pay them their wages, which appears to be inconsistent with the idea that he had passed on the demand and adjudged the men not entitled to any wages whatever.

The consul is not a court, and neither his record nor his testimony is conclusive on this court. He can not shut his door in the face of parties and then, by declaring that he has adjudicated upon the demand, cut them off from a resort to the courts. Before he can call upon the courts to decline to entertain the action, he must show that he has given or is willing to give, to the seamen that hearing which the treaty intends they should have. Here the vice-consul himself testifies, "No adjudication was made in writing—a memorandum only was made. It was noted on the protocol as follows: 'A requisition has been made and given to the captain to be given to the court.'" The making such an entry is not sitting as judge or arbitrator on the present demand.

To hold, on such proof, that the vice-consul has acted as judge or as arbitrator in respect to this demand, would countenance a mode of procedure which I should be sorry to see obtain. My conclusion, therefore, is that there has been no such examination and adjudication of the matter in hand by the consul as the courts require and the treaty intends to secure.

In the absence then of any legal limitation of the jurisdiction of the court by the treaty, and in the absence of any proof of such action on the part of the consul as should call upon the court to decline to entertain the action, I deem it my duty to proceed to render a decree—and I do this the more willingly because the master of this vessel is half owner of her, and is here present, where also the seamen are—and because the ship is laid up here by reason of war, nor can it be told when, if ever, she will return to her home. It is a vain thing, therefore, to say to these sailors, who, although having some \$1,100 of wages due, and unpaid, are left paupers, that they must go to Prussia, and there await the return of the ship in order to enforce their demand. If they can not now maintain this action, they are practically deprived of all remedy, and thrown upon this community penniless. Against such a result my sense of justice revolts, and I am unwilling to believe that it is compelled by the law. I, therefore, without hesitation, pronounce in this case the decree which the maritime law, applied to the facts, requires, and condemn the vessel to pay the wages of the men.

In considering this case thus far, I have treated the action of the vice consul as equivalent to that of the consul, and have so spoken of it. In point of fact, Dr. Roesing, the consul-general who signed the requisition, which is the only official act proved, aside from the memorandum on the protocol, never saw either the master or the men, the vice consul acting for him in everything, except signing the requisition. I have also spoken of the consul as the consul of Prussia, and have considered him to be the official referred to in the treaty with Prussia.

The point has been taken that the proofs show Dr. Roesing to be consul general of the North German Union; that there are now no consuls of Prussia, nor any similar treaty with the North German Union. But it appears from the law, proved, that the consul of the North German Union is the consul of each power comprehended in the Union, which is a confederation rather than a Union. Besides, the executive department recognizes Dr. Roesing as the consul of Prussia, by virtue of his appointment as consul-general of the North

German Union, and the courts are bound by the action of the executive in such a matter, the question being political, and not judicial.

There remains to allude to the phase of the case which is presented by the fact that the libel is filed by Newman, the mate, to recover his own wages, and also the wages of the other men, as the assignee of their demands. So far I have treated the case as if all the men were parties libellant.

The evidence shows the execution of a formal assignment to the mate of the claims of the other men, but it also appears that the assignment was without consideration, and that the men all expect to receive whatever may be recovered as their wages. This mode of procedure to save multiplicity of suits seems to have been adopted in ignorance of the rule of the admiralty, which enables several seamen to join in one action; and the mate, upon the trial, filed a consent that the other men be now joined as colibellants, and receive in their own persons whatever might be awarded for their claims. Upon such a consent and such facts, I deem it competent to permit all the seamen to join in the action, upon petition to be made colibellants, and, on showing the cancellation of their assignments to the mate, to take a decree in their own names for the wages found due them. Two of them are minors, it is true, but, in the admiralty, minors who are mariners are permitted to sue for their wages in their own names. All seamen are in a certain sense treated as minors in maritime courts.

In accordance with these views, let a decree be entered in favor of the mate, for his wages earned in the services of this vessel, and still unpaid, with a reference to ascertain the amount, and let similar decrees be made in favor of the seamen, upon the filing of their petition, and showing the cancellation of their assignments to the mate.

For Libellants, *D. McMahon*.

For Claimant, *E. Salomon*.

EX PARTE NEWMAN¹

Certain Prussian sailors libelled a Prussian vessel in New York in admiralty for wages, less in amount than \$2,000. The master set up a provision in a treaty of the United States with Prussia, by which it was stipulated that the consuls of the respective countries should sit as judges in "differences between the crews and captains of vessels" belonging to their respective countries; and the consul of Prussia, coming into the District Court, pro-

¹81 U. S. 152. (Dec. 1871.)

tested against the District Court's taking jurisdiction. The District Court, however, did take jurisdiction, and decreed \$712 to the sailors. On appeal the Circuit Court reversed the decree, and dismissed the libel because of the consul's exclusive jurisdiction. *Held*, that mandamus would not lie to the Circuit judge to compel him to entertain jurisdiction of the cause on appeal, and to hear and decide the same on the merits thereof; and that this conclusion of this court was not to be altered by the fact that owing to the sum in controversy being less than \$2,000, no appeal or writ of error from the Circuit Court to this court existed.

PETITION for writ of mandamus to the United States Circuit judge for the Eastern District of New York; the case being thus:

The Constitution ordains¹ that the judicial power of the United States shall extend "to all cases of admiralty and maritime jurisdiction."

The 10th article of the treaty of the United States with the King of Prussia, made May 1st, 1828,² contains this provision:

The consuls, vice-consuls, and commercial agents shall have the right as such to sit as judges, and arbitrators *in such differences* as may arise between *the captains and crews of the vessels* belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews, or of the captain, should disturb the order or tranquillity of the country; or the said consuls, vice-consuls, or commercial agents, should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood that this species of judgment or arbitration shall not deprive the contending parties of the rights they have to resort on their return to the judicial authority of their country.

"All treaties made, or which shall be made, under the authority of the United States," it is ordained by the Constitution of the United States,³ "shall be the supreme law of the land."

With this treaty thus in force, the mate and several of the crew, all Prussians—who had shipped in Prussia on the Prussian bark *Elwinc Kreplin*, under and with express reference, made in the shipping articles, to the laws of Prussia—got into a difficulty at New York with the master of the bark, who caused several of them to be arrested on charges of mutiny and desertion. They, on the other hand, took

¹Article 3, Sec 2.

²8 Stat. at Large, p. 378.

³Article 6.

the case before the Prussian consul; denying all fault on their part, and claiming wages. The vice-consul heard the case, and decided that on their own showing they had forfeited their wages by the Prussian law applied to their contract of shipment. In addition to this he issued a requisition addressed to any marshal or magistrate of the United States, reciting that the master and crew had been guilty of desertion, and requiring such marshal or magistrate to take notice of their offence.

The mate and men now filed a libel in the District Court at New York against the bark for the recovery of wages (less than \$2,000), which they alleged were due to them; and the bark was attached to answer. The master of the bark intervening for the interest of the owners answered, and set up various grounds of defence to the claim, some of which arose under the laws of Prussia, and especially he invoked the protection of the clause in the above quoted treaty between his country and this, and denied the jurisdiction of the District Court, alleging, moreover, that the matter in difference, the claim of the libellants for wages, had already in fact been adjudicated by the Prussian consul at the port of New York.

Before the cause was tried in the District Court, the consul-general of the North German Union presented to that court his formal protest against the exercise of jurisdiction by that court in the matter in difference.* He invoked therein the same clause in the treaty, and claimed exclusive jurisdiction of such matters in difference; and declared also that, before the filing of the libel the matter had been adjudicated by him, and insisted that his adjudication was binding between the parties, and could only be reviewed by the judicial tribunals of Prussia.

The District Court proceeded notwithstanding to hear and adjudge the case; placing its right to do this, on the ground that the suit before it was a proceeding *in rem* to enforce a maritime lien upon the vessel itself, and not a "difference between the captain and crew;" and, also, because the Prussian consul had no power to conduct and

*The consul-general of the North German Union was commissioned by the King of Prussia, Prussia being one of the States composing the North German Union; and by certificate of the Secretary of State of the United States, under the seal of that department, it appeared that the Executive Department of the United States recognizes the consuls of the North German Union as consuls of each one of the sovereign States composing that Union, "the same as if they had been commissioned by each one of such States."

carry into effect a proceeding *in rem* for the enforcement of such a lien, and had not in fact passed at all and could not pass upon any such case. Accordingly after a careful examination of the facts, that court decreed in favor of the libellants \$712. The case then came by appeal to the Circuit Court. This latter court considered that the District Court had given to the treaty too narrow and technical a construction. The Circuit Court said:

The master is the representative in this port of the vessel and of all the interests concerned therein. He is plainly so regarded in the treaty. The matter in difference in this cause is the claim for wages. That arises between the crew and the master, either as master or as the representative here of vessel and owners. The lien and the proceeding *in rem* against the vessel appertain only to the remedy. The very first step in this cause is to settle the matter in dispute. If the claim be established, then, as incident to the right to the wages, the lien and its enforcements against the vessel follow. The District Court can have no jurisdiction of the lien, nor jurisdiction to enforce it if it has no jurisdiction of the difference or dispute touching the claim for wages. To hold that the jurisdiction of the consul is confined to cases in which there is no maritime lien, and in which no libel of the vessel could, apart from the treaty, be maintained, is to take from the treaty much of its substance.

The Circuit Court adverted to and relied on the fact, that the Prussian consul had moreover actually heard the mate and sailors, and pronounced against them.

The Circuit Court accordingly, while it expressed on a general view of the merits its sympathy with the sailors, and a strong inclination to condemn the conduct of the master in the matter, yet was "constrained to the conclusion that the treaty required that the matter in difference should have been left where the treaty with Prussia leaves it, viz., in the hands and subject to the determination of their own public officer." The result was the dismissal of the libels by the Circuit Court for want of jurisdiction.

Thereupon Newman and the others, by their counsel, *Messrs. P. Phillips and D. McMahon*, filed a petition in *this* court for a writ of mandamus to the Circuit judge, commanding him "to entertain jurisdiction of the said cause on appeal, and to hear and decide the same on the merits thereof." The judge returned that the Circuit Court had entertained the appeal, and had heard counsel on all the ques-

tions raised in the case, and had decided it; and that the said court had decided that the matter in controversy was within the jurisdiction of the consul under the treaty, and that in the exercise of the jurisdiction so given him, he had decided the matter, and that therefore the court had dismissed the libel.

The question now was whether the mandamus should issue.

The reader will of course remember the provision in the 13th section of the Judiciary Act, by which it is enacted:

That the Supreme Court shall have power to issue writs of mandamus in cases warranted by the principles and usages of law, to any courts appointed or persons holding office under the authority of the United States.

And also the provision of the 22d section, extended by an act of 1803 to appeals in admiralty, by which it is enacted:

That final judgments and decrees in civil actions . . . in a Circuit Court . . . removed there by appeal from a District Court, where the matter in dispute exceeds the sum or value of \$2,000, exclusive of costs, may be reexamined and reversed or affirmed in the Supreme Court.

Messrs. D. McMahon and P. Phillips, in support of the motion:

The mandamus should issue:

1st. Because the treaty stipulation is unconstitutional. It strips the courts of the United States of the admiralty jurisdiction conferred on them by the Constitution of the United States. It is well settled that admiralty courts have jurisdiction, at their discretion, over foreign vessels within their jurisdiction, and actions *in rem* against them brought by foreign seamen. If then the treaties attempt to confer on a foreign officer exclusive jurisdiction of cases already within the control of admiralty, they violate the Constitution, and are so far null.

2d. The treaty with Prussia has no reference to suits or proceedings *in rem*, and in that respect differs from the case mentioned in the treaty, of a difference between the master and seamen. The proceeding is against the vessel to foreclose a lien, and the owners are brought in incidentally. The master, as such, has no interest, nominal or otherwise, in the suit in question, and it is a misnomer to call the present case a controversy between a master and his crew.

3d. The Prussian consul made no adjudication in the matter *now* in difference, between the libellants and the master.

4th. The treaty is with the kingdom of Prussia, and the tribunals referred to in it are the consuls, vice-consuls, and commercial agents of that government. Now, at the time of the occurrence of the facts here in controversy, there were no consuls, or vice-consuls, or commercial agents of the kingdom of Prussia in the city of New York, or in the United States, though there are such officers of the North German Union. A treaty stipulation to maintain tribunals independent of our own, in this country, is contrary to the spirit of our institutions, as its effect may be to create in our midst many tribunals independent of our national courts. It should, therefore, be construed strictly.

5th. The consul is estopped from asserting his exclusive jurisdiction, because that he appealed in his "requisition" to our marshals and other magistrates, and prayed them to take cognizance of the case. He can not be permitted after doing so, to avail himself of the benefit of the treaty stipulations.

Messrs. Salomon and Burke, contra:

This is an attempt to cause this court to review the decision already rendered in the Circuit Court and to direct the Circuit judge to change his decision, and to render a different judgment in a case which can not be brought before this court by appeal, because the amount in controversy is less than \$2,000. This can not be done.

Mandamus can not perform the functions of a writ of error or of an appeal. This court will never direct in what manner the discretion of an inferior tribunal shall be exercised; but will only, in a proper case, require the inferior court to decide. If the Circuit judge had refused to decide the case, or to enter a decree therein, this court might compel him by mandamus to decide or to enter a decree; but even then it could not by such process have commanded him how to decide it, or what decree to enter. A revision of his judicial decision can only take place by appeal. But here the applicants do not complain that the judge has refused to decide the case, or that he has refused to enter judgment, but they complain that his decision upon some of the questions involved therein, and which were fully argued before, and have been carefully considered and adjudged by him, is

erroneous, and that consequently this court should overrule his judgment in this case.

Now, strictly speaking, this court can not look into the opinion of the Circuit judge for the purpose of ascertaining on what ground his decision is based with a view of revising it.

It can look only to the record, which shows only that the Circuit Court has entertained the appeal, heard and tried it, and upon such hearing and trial, after due consideration, has ordered that the decree of the District Court be reversed and the libel dismissed. How can this court, then upon an application for a mandamus, compel him to decide differently?

But, waiving this, no doubt the question arising under the treaty with Prussia has from the beginning been the material question in the controversy. That under the treaty the Prussian consul had exclusive jurisdiction, and had exercised that jurisdiction and decided between the parties, was set up by the claimant in his answer; it was brought before the District Court by the consul's protest; upon that, mainly, the appeal was taken to the Circuit Court. The question involved not only the proper construction of the treaty, but also the examination and adjudication of important facts and circumstances relating to the consul's action in the case. All the points were argued before the Circuit Court, and that court, after consideration, has decided upon the facts and the law. This is in no proper sense a case in which the Circuit Court has refused to entertain or to exercise jurisdiction. It has, in fact, entertained the appeal from the decree of the District Court, and upon consideration has decided that the decree appealed from should be reversed, on three grounds:

First. That under the treaty with Prussia, the Prussian consul had jurisdiction of the matter in difference involved in the litigation.

Second. That that jurisdiction of the Prussian consul was exclusive.

Third. Upon the proofs the court found and decided, that the Prussian consul *had* adjudicated the matter in difference involved in the litigation, and that the libellants were bound by that adjudication.

If this court can by mandamus review this decision of the Circuit Court, then it can in this manner review every case in which a suit is dismissed on the ground of a former adjudication of the subject-matter between the same parties.

Admiralty courts generally decline to interfere between foreigners concerning seamen's wages, except where it is manifestly necessary to do so to prevent a failure of justice, and then only where the voyage has been broken up, or the seamen have been discharged.* Now, if for this reason, in the proper exercise of his judicial discretion, the Circuit judge, on appeal, had ordered a dismissal of the libel, can it be maintained that by mandamus this court could compel him to reverse his own decision? *Non constat* that, if the Circuit judge had not ordered the dismissal of the libel on account of the treaty and the exercise of the consular jurisdiction, he would not have so ordered on this ground of comity between nations.

The application is for a mandamus directing the Circuit judge to hear the appeal and to decide the same on the merits thereof. What are the *merits* of the controversy? Is not this question of the jurisdiction of the Prussian consul and his decision a part of them? Will this court, by mandamus, determine what is and what is not of "the merits of a controversy?"

Reply: The law will leave no one remediless, and the amount in controversy not being \$2,000, and no appeal existing, and there being no other remedy, the remedy in the premises must be by mandamus. The writ is issued to inferior courts to enforce the due exercise of these judicial powers; "and this not only by restraining their excesses, but also by quickening their negligence and obviating their denial of justice."¹ While this court will not restrain nor direct by mandamus in what manner the discretion of the inferior tribunal should be exercised, it will, in proper cases, require the court to hear and decide. The "principles and usages of law," give the right to a mandamus where a party has a legal right, and no other remedy to enforce it.²

In the case at bar the proposed mandamus does not usurp the functions of a writ of error or appeal, for no appeal lies, the amount being less than \$2,000.

The case is this. The Circuit judge refuses to consider and determine, on the merits, a cause over which he has ample jurisdiction, he entertaining the opinion that he has no jurisdiction, because of the

**Gonzales v. Minor*, 2 Wallace, Jr., 348.

¹*Ex parte Bradley*, 7 Wallace, 375.

²Phillips's Practice, 230.

terms of treaty with Prussia, In this court it is submitted that his conclusion is erroneous. No appeal, however, lies. A Circuit judge entertaining very strict notions of the extent of admiralty jurisdiction, might, in a contest between State and National courts, paralyze the commerce of a great commercial port like New York. Can there be no correction for this? Is a party to be dismissed in a case like this, with the allegation that the writ of mandamus can not usurp the function of a writ of error, therefore there is no correction?

While it is conceded that the writ of mandamus can not be used to correct an erroneous judgment of a court of acknowledged jurisdiction, yet it can be invoked to compel a court to exercise its jurisdiction, even though such court be of the opinion it had not jurisdiction. The distinction between the two classes of cases is obvious. The distinction lies between a direction to an inferior tribunal to act, and direction to it how to act. We do not seek to control the Circuit Court's judgment by the mandamus, but only to compel it to entertain jurisdiction of the cause, and then to hear and decide according to the law and the allegations and proofs.

Authorities are clear on the right of a superior tribunal to compel an inferior tribunal to hear a cause and decide it even after the latter has declined to entertain the cause because of an alleged want of jurisdiction.*

Mr. Justice CLIFFORD delivered the opinion of the court.

Attempt was made in the first place to prosecute the suit in the name of the mate for himself and as assignee of the crew, but the court before entering the decree suggested an amendment, and the crew were admitted as colibellants, which will render it unnecessary to make any further reference to that feature of the pleadings.

Proceedings *in rem* were instituted in the District Court against the bark Elwine Kreplin, by the mate, for himself and in behalf of the crew of the bark, on the twenty-fourth of August, 1870, in a case of subtraction of wages civil and maritime, and they allege in the libel, as amended, that the bark is a Prussian vessel, and that they are Prussian subjects, and that they were hired by the master and legally shipped on board the bark for a specified term of service, and that they con-

**Rex v. Justices of Kent*, 14 East, 395; *Hull v. Supervisors of Oneida*, 19 Johnson, 260; *Judges of Oneida County v. The People*, 18 Wendell, 92 and 95.

tinued well and truly to perform the duties they were shipped to fulfil, and that they were obedient to the lawful commands of the master, until they were discharged. They also set forth the date when they were shipped, the length of time they had served, the wages they were to receive, and the amount due and unpaid to them respectively for their services, and aver that the owners of the bark refuse to pay the amount.

Process was issued and served by the seizure of the bark, and the master appeared, as claimant, and filed an answer. He admits that the appellants shipped on board the bark at the place and in the capacities and for the wages alleged in the libel, but he avers that they signed the shipping articles and bound themselves by the rules, regulations, and directions of the shipping law and rules of navigation of the country to which the bark belonged, and he denies that they well and truly performed their duties, or that they were obedient to his lawful commands. On the contrary, he alleges that they, on the day they were discharged, were guilty of gross insubordination and mutinous conduct, that they resisted the lawful commands of the master, and refused to obey the same, and interfered with him in the performance of his duty, and with force and threats prevented him from performing the same, and thereafter, on the same day, deserted from the vessel.

Apart from the merits he also set up the following defences:

1. That the court had no jurisdiction of the matter contained in the libel, because the bark was a Prussian vessel, owned by Prussian citizens, and because the libellants were Prussian subjects belonging to the crew of the vessel, and were also citizens of that kingdom.

Support to that defence is derived from the tenth article of our treaty with that government, which provides that consuls, vice-consuls, and commercial agents of the respective countries, in the ports of the other, shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews, or of the captain, should disturb the order or tranquillity of the country, or the consuls, vice-consuls, or commercial agents should require their assistance to cause their decisions to be carried into effect.*

*8 Stat. at Large, 382.

He set up that provision of the treaty, and prayed that he might have the same advantage of it as if the same was separately and formally pleaded to the libel.

2. That the libellants in signing the shipping articles bound themselves, under the penalty of a forfeiture of wages, not to sue or bring any action for any cause, against the vessel, or the master, or owners thereof, in any court or tribunal except in those of Prussia.

3. That the consul-general of the North German Union, resident in the city of New York, which Government included Prussia and other sovereignties, heard and examined the questions of difference between the libellants and the claimant and adjudicated the same; that the libellants appeared before the court on the occasion and presented their claim to be discharged and their claim for wages, and that the consul, in his character as such, heard and examined their said claims and adjudged that the libellants should return to the vessel, and that no wages were due them or would be due them until they complied with the contract of shipment.

Testimony was taken in the District Court, and the District Court entered a decree in favor of the libellants for the amount due them for their wages, and referred the cause to a commissioner to ascertain and report the amount. Subsequently he reported that the amount due to the libellants was seven hundred and forty-three dollars and forty-one cents. Exceptions were filed by the claimant, and the District Court upon further hearing reduced the amount to seven hundred and twelve dollars and thirty-two cents, and entered a final decree for that amount, with costs of suit. Thereupon the claimant appealed to the Circuit Court, and the record shows that the appeal was perfected, and that the cause was duly entered in that court.

On the fifth of the last month the petition under consideration was filed in this court in behalf of the appellees in that suit, in which they represented that the cause appealed was fully argued before the Circuit Court on the same pleadings and proofs as those exhibited in the District Court, and that the Circuit judge reversed the decree of the District Court and dismissed the libel for want of jurisdiction in the District Court to hear and determine the controversy; that the Circuit judge declined to entertain the cause or to consider the same on the merits, and that no final decree on the appeal has been entered in the Circuit Court or signed by the Circuit judge.

His refusal to entertain jurisdiction and to hear and decide the

merits of the case was placed, as they allege, upon the ground that the matter in difference, under the tenth article of the treaty, was within the exclusive cognizance of the consul, vice-consul, or commercial agent therein described, and in consequence thereof that the District Court was without any jurisdiction, which they contend is an error for the following reasons:

(1.) Because the treaty stipulation, if so construed, is unconstitutional and void.

(2.) Because that article of the treaty applies only to disputes between the masters and crews of vessels, and has no reference to suits *in rem* against the vessel.

(3.) Because the record in this case shows that the Prussian authorities refused to entertain jurisdiction of the controversy.

(4.) Because the treaty is with Prussia, and it appears that her government has no consul, vice-consul, or commercial agent at that port.

(5.) Because that the consul who acted in the case requested the District Court to take jurisdiction of the matter in difference.

Hearing was had on the day the petition was presented, and this court granted a rule requiring the Circuit judge to show cause on the day therein named why a peremptory writ of mandamus should not issue to him directing him to hear the appeal of the petitioners and decide the same on the merits. Due service of that rule was made, and the case now comes before the court upon the return of the judge to that rule. He returns, among other things not necessary to be reproduced, as follows: That the cause of the libellants proceeded to a decree in their favor in the District Court; that an appeal from that decree was taken in due form to the Circuit Court for that district; that the Circuit Court did not refuse to entertain the appeal nor did the Circuit Court refuse to decide the case on the appeal nor hold or decide that the Circuit Court had no jurisdiction to hear or decide the same, as required by the proofs or by the law. On the contrary, the Circuit Court did entertain the appeal, did hear the counsel of the parties fully on all the questions raised in the case, and did decide the same. But in making such decision the said court did hold and decide that the matter in controversy was within the jurisdiction of the consul, under the treaty, and that the consul, in the exercise of that jurisdiction, after hearing the parties, had decided the matter. Pur-

suant to those views the Circuit Court, as the return shows, did there-upon direct that the decree of the District Court be reversed, and that the libel of the petitioners be dismissed.

Power to issue writs of mandamus to any courts appointed under the authority of the United States was given to this court by the thirteenth section of the Judiciary Act, in cases warranted by the principles and usages of law.* When passed, the section also empowered the court to issue such writs, subject to the same conditions, to persons holding office under the United States, but this court, very early, decided that the latter provision was unconstitutional and void, as it assumed to enlarge the original jurisdiction of the court, which is defined by the Constitution.¹

Applications for a mandamus to a subordinate court are warranted by the principles and usages of law in cases where the subordinate court, having jurisdiction of a case, refuses to hear and decide the controversy, or where such a court, having heard the cause, refuses to render judgment or enter a decree in the case, but the principles and usages of law do not warrant the use of the writ to reexamine a judgment or decree of a subordinate court in any case, nor will the writ be issued to direct what judgment or decree such a court shall render in any pending case, nor will the writ be issued in any case if the party aggrieved may have a remedy by writ of error or appeal, as the only office of the writ when issued to a subordinate court is to direct the performance of a ministerial act or to command the court to act in a case where the court has jurisdiction and refuses to act, but the supervisory court will never prescribe what the decision of the subordinate court shall be, nor will the supervisory court interfere in any way to control the judgment or discretion of the subordinate court in disposing of the controversy.² Where a rule is laid, as in this case, on the judge of a subordinate court, he is ordered to show cause why the peremptory writ of mandamus shall not issue to him, commanding him to do some act which it is alleged he has power to do, and which it is his duty to do, and which he has improperly neglected and refused

*1 Stat. at Large, 81.

¹*Marbury v. Madison*, 1 Cranch, 175; *Ex parte Hoyt*, 18 Peters, 290.

²*Insurance Co. v. Wilson*, 8 Peters, 302; *United States v. Peters*, 5 Church, 135; *Ex parte Bradstreet*, 7 Peters, 648; *Ex parte Many*, 14 Howard, 24; *United States v. Lawrence*, 3 Dallas, 42; *Commissioner v. Whitely*, 4 Wallace, 522; *Insurance Co. v. Adams*, 9 Peters, 602.

to do, as required by law. Due service of the rule being made the judge is required to make return to the charge contained in the rule, which he may do by denying the matters charged or by setting up new matter as an answer to the accusations of the relator, or he may elect to submit a motion to quash the rule or to demur to the accusative allegations. Matters charged in the rule and denied by the respondent must be proved by the relator, and matters alleged in avoidance of the charge made, if denied by the relator, must be proved by the respondent.¹ Motions to quash in such cases are addressed to the discretion of the court, but if the respondent demurs to the rule, or if the relator demurs to the return the party demurring admits everything in the rule or the return, as the case may be, which is well pleaded, and if the relator elects to proceed to hearing on the return, without pleading to the same in any way, the matters alleged in the return must be taken to be true to the same extent as if the relator had demurred to the return.² Subordinate judicial tribunals, when the writ is addressed to them, are usually required to exercise some judicial function which it is alleged they have improperly neglected or refused to exercise, or to render judgment in some case when otherwise there would be a failure of justice from a delay or refusal to act, and the return must either deny the facts stated in the rule or alternative writ on which the claim of the relator is founded, or must state other facts sufficient in law to defeat the claim of the relator, and no doubt is entertained that both of those defences may be set up in the same return, as in the case before the court.³ Several defences may be set up in the same return, and if any one of them be sufficient the return will be upheld.⁴

Evidently the District judge was inclined to adopt the proposition, advanced by the libellants, that the suit for wages, as it was prosecuted by a libel *in rem*, was not within the treaty stipulation, nor a contro-

¹Angell & Ames on Corporations, 9th ed. Sec. 727; *Cagger v. Supervisors*, 2 Abbott's Practice, N. S. 78.

²Tapping on Mandamus, 347; *Moses on Mandamus*, 210; *Com. Bank v. Commissioners*, 10 Wendell, 25; *Ryan v. Russel*, 1 Abbott's Practice, N. S. 230; *Hanahan v. Board of Police*, 26 New York, 316; *Middleton v. Commissioners*, 37 Pennsylvania State, 245; 3 Stephens's *Nisi Prius*, 2326; 6 Bacon's Abridgment, ed. 1856, 447.

³*Springfield v. Harnden*, 10 Pickering, 59; *People v. Commissioners*, 11 Howard's Practice, 89; *People v. Champion*, 16 Johnson, 61.

⁴*Wright v. Fawcett*, 4 Burrow, 2041; *Moses on Mandamus*, 214.

versy within the jurisdiction of the consul, but he did not place his decision upon that ground. He did, however, rule that the treaty did not have the effect to change the jurisdiction of the courts, except to require them to decline to hear matters in difference between the masters and crews of vessels in all cases where the consul had acted or perhaps was ready to act as judge or arbitrator in respect to such differences. Beyond doubt he assumed that to be the true construction of the treaty, and having settled that matter he proceeded to inquire whether the consul had adjudicated the pending controversy, or whether the evidence showed that he was ready to do so, and having answered those inquiries in the negative he then proceeded to examine the pleadings and proofs, and came to the conclusion in the case which is expressed in the decree from which the appeal was taken to the Circuit Court.

All of those matters were again fully argued in the Circuit Court, and the Circuit judge decided to reverse the decree of the District Court upon the following grounds: (1.) That the Prussian consul, under the treaty, had jurisdiction of the subject-matter involved in the suit in the District Court. (2.) That the jurisdiction of the consul under the treaty was exclusive. (3.) That the proofs showed that the consul heard and adjudicated the matter involved in the suit appealed to the Circuit Court, and that the libellants were bound by that adjudication.

Such questions were undoubtedly raised in the pleadings, and it is equally certain that they were decided by the District Court in favor of the libellants. Raised as they were by the pleadings, it can not be successfully denied that the same questions were also presented in the Circuit Court, and in view of the return it must be conceded that they were decided in the latter court in favor of the respondent. Support to that proposition is also found in the opinion of the Circuit judge, and in the order which he made in the case. Suffice it, however, to say, it so appears in the return before the court, and this court is of the opinion that the return, in the existing state of the proceedings, is conclusive.

Confessedly the petitioners are without remedy by appeal or writ of error, as the sum or value in controversy is less than the amount required to give that right, and it is insisted that they ought on that account to have the remedy sought by their petition. Mandamus will not lie, it is true, where the party may have an appeal or writ of error,

but it is equally true that it will not lie in many other cases where the party is without remedy by appeal or writ of error. Such remedies are not given save in patent and revenue cases, except when the sum or value exceeds two thousand dollars, but the writ of mandamus will not lie in any case to a subordinate court unless it appears that the court of which complaint is made refused to act in respect to a matter within the jurisdiction of the court and where it is the duty of the court to act in the premises.

Admiralty courts, it is said, will not take jurisdiction in such a case except where it is manifestly necessary to do so to prevent a failure of justice, but the better opinion is that, independent of treaty stipulation, there is no constitutional or legal impediment to the exercise of jurisdiction in such a case. Such courts may, if they see fit, take jurisdiction in such a case, but they will not do so as a general rule without the consent of the representative of the country to which the vessel belongs, where it is practicable that the representative should be consulted. His consent, however, is not a condition of jurisdiction, but is regarded as a material fact to aid the court in determining the question of discretion, whether jurisdiction in the case ought or ought not to be exercised.*

Superior tribunals may by mandamus command an inferior court to perform a legal duty where there is no other remedy, and the rule applies to judicial as well as to ministerial acts, but it does not apply at all to a judicial act to correct an error, as where the act has been erroneously performed. If the duty is unperformed and it be judicial in its character the mandate will be to the judge directing him to exercise his judicial discretion or judgment, without any direction as to the manner in which it shall be done, or if it be ministerial, the mandamus will direct the specific act to be performed.¹

Power is given to this court by the Judiciary Act, under a writ of error, or appeal, to affirm or reverse the judgment or decree of the Circuit Court, and in certain cases to render such judgment or decree as the Circuit Court should have rendered or passed, but no such power is given under a writ of mandamus, nor is it competent for the superior tribunal, under such a writ, to reexamine the judgment or decree

*2 Persons on Shipping, 224; *Lynch v. Crowder*, 2 Law Reporter, N. S. 355; *Thompson v. Nanny*, Bec. 217; *The Bee*, Ware, 332; *The Infanta*, Abbott's Admiralty, 263.

¹*Carpenter v. Bristol*, 21 Pickering, 258; Angell & Ames on Corporations, 9th ed., Sec. 720.

of the subordinate court. Such a writ can not perform the functions of an appeal or writ of error, as the superior court will not, in any case, direct the judge of the subordinate court what judgment or decree to enter in the case, as the writ does not vest in the superior court any power to give any such direction or to interfere in any manner with the judicial discretion and judgment of the subordinate court.¹

Viewed in the light of the return, the court is of the opinion that the rule must be discharged and the

Petition denied.

Case No. 4,426

THE ELWINE KREPLIN²

[9 Blatchf. 438]³

Circuit Court, E. D. New York. Feb. 23, 1872.⁴

CONSTITUTIONAL LAW—EFFECT OF EXPRESS PROVISIONS OF FOREIGN TREATY UPON
JURISDICTION OF LOCAL COURTS

Article 10 of the treaty between the United States and the king of Prussia, of May 1, 1828 (8 Stat. 378, 382), provides, that the consuls, vice-consuls and commercial agents of each party "shall have the right, as such, to sit as judges and arbitrators, in such differences as may arise between the captains and crews of the vessels belong to the nation whose interests are committed to their charge, without the interference of the local authorities," subject to the right of the contending parties "to resort, on their return, to the judicial authority of their country," and to the right of the consuls, vice-consuls or commercial agents to require the assistance of the local authorities, "to cause their decisions to be carried into effect or supported." The crew of a Prussian vessel sued her *in rem*, in admiralty, in the district court, to recover wages alleged to be due to them. The master of the vessel answered, denying the debt, invoking the protection of said treaty, denying the jurisdiction of the court, and averring that the claim for wages had already been adjudicated by the Prussian consul at New York. The consul also protested formally to the

¹*Ex parte Crane*, 5 Peters, 194; *Ex parte Bradstreet*, 7 *Id.* 634; *Insurance Co. v. Wilson*, 8 *Id.* 304; *Ex parte Many*, 14 Howard, 25.

²8 Federal Cases, 588.

³[Reported by Hon. Samuel Blachford, District Judge, and here reprinted by permission.]

⁴[Reversing *The Elwine Kreplin*, Case No. 4,427.]

court against the exercise of its jurisdiction. The case was tried in the district court, and it appeared that the consul had adjudicated on the claim for wages. The district court decreed in favor of the libellants: *Held*, that the district court had no jurisdiction of the case.

[Cited in *The Belgenland v. Jensen*, 114 U. S. 364, 5 Sup. Ct. 864; *Re Aubrey*, 26 Fed. 851; *Davis v. The Burchard*, 42 Fed. 608; *The Welhaven*, 55 Fed. 81.]

[Appeal from the district court of the United States for the eastern district of New York.]

[This was a case of subtraction of wages, instituted by Max Newman, the chief mate of the Prussian bark *Elwine Kreplin*, to recover the sum of \$173, amount of wages due; also \$1,158, the aggregate amount of the wages of the crew, which he claimed to recover as assignee. In the district court a decree was given in favor of the mate (Case No. 4,427), whereupon this appeal is prosecuted.]

Dennis McMahon, for libellants.

Edward Salomon, for claimants.

WOODRUFF, Circuit Judge. By the tenth article, of the treaty made by the United States with the king of Prussia, on the 1st of May, 1828 (8 Stat. 378, 382), it is provided, that "the consuls, vice-consuls, and commercial agents,"—which each of the parties to the treaty is declared entitled to have in the ports of the other—"shall have the right, as such, to sit as judges and arbitrators, in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities. * * * It is, however, understood, that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country." To this general rule there is a qualification: "Unless the conduct of the crews, or of the captain, should disturb the order or tranquillity of the country, or the said consuls, vice-consuls, or commercial agents should require their assistance" (the assistance of the local authorities), "to cause their decisions to be carried into effect or supported." This treaty is, by the constitution of the United States, the law of the land, and the courts of justice are bound to observe it. When a case arises which is within this provision of the treaty, jurisdiction thereof belongs to the consul, vice-consul or commercial agent of the nation whose interests are committed to his charge, and with the exercise of that jurisdiction the local tribunals

are not at liberty to interfere, unless such consul, vice-consul, or commercial agent requires their assistance, to cause their decision to be carried into effect or supported.

In the present case, the mate and several of the crew of the barque *Elwine Kreplin* prosecuted their libels against the vessel, in the district court, for the recovery of wages alleged to be due to them, which the master of the vessel denied to be due, upon various grounds; and the vessel was attached to answer. The master of the barque, intervening for the interest of the owner, sets up, in his answer, various grounds of defence to the claim, some of which arise under the laws of Prussia; and, especially, he invokes the protection of the treaty above-mentioned, and denies the jurisdiction of the district court, alleging, moreover, that the matter in difference—the claim of the libellants for wages—has already, in fact, been adjudicated by the Prussian consul at the port of New York. Before the cause was tried in the district court, the consul-general of the North German Union presented to the district court his formal protest against the exercise of jurisdiction by that court in the matter in difference. He invoked therein the treaty above referred to, and claimed exclusive jurisdiction of such matter in difference; and he also declared, that, before the filing of the libel, the said matter had been adjudicated by him, and insisted that his adjudication was binding between the parties, and could only be reviewed by the judicial tribunals of Prussia.

The barque is a Prussian vessel, the mate and crew are Prussian seamen, who shipped in Prussia, under and with express reference to the laws of Prussia, referred to in the shipping articles, and it should be assumed, that the treaty which binds this nation and its citizens and seamen, binds also Prussia and her subjects and seamen. The consul-general of the North German Union is commissioned by the king of Prussia, and, by certificate of the secretary of state of the United States, under the seal of that department, it appears, that the executive department of the United States recognizes the consuls of the North German Union as consuls of each one of the sovereign states composing that Union, "the same as if they had been commissioned by each one of such states." The kingdom of Prussia is one of the states composing the North German Union. The treaty does not require that the consuls, vice-consuls, &c., should bear any specific name. It is sufficient, that the "interests" of Prussia "are committed

to their charge," and quite sufficient, that the government of the United States, by its executive, recognizes the consul as consul of the kingdom of Prussia.

The discussion of the case at the hearing on the appeal, was, on the part of the libellants, very largely devoted to the merits of the claim for wages, upon principles applicable, it may be, to the subject, if no such treaty was in force, and under decisions of our courts in reference to the rights and duties of seaman and master, the effect of the misconduct of either upon the obligation of the other, for the purpose of showing that the treatment of the libellants by the master exonerated them from their duty to serve according to the terms of the shipping articles, and also from all others of its stipulations, even from such as arise from the laws of Prussia forming a part of the terms, stipulations, and conditions which enter into the relation of the crew to the master and owners, and to the vessel. That discussion was very full, and was presented, in argument, with great ability, by the counsel for the libellants. With most of the rules of the law invoked by the counsel, when considered apart from and independent of any treaty stipulation, the claimants have no contest; and they are, no doubt, settled, by the cases cited. But the prior question of jurisdiction must be determined, before it is competent even to enquire into the merits of the libellants' claim to recover their wages.

In the first instance, it would seem clear, that a claim of the crew of a Prussian vessel to recover wages which the master of the vessel either denied to be due, or refused to pay, was, *par eminence*, a matter in difference between the captain and crew, which, by the very terms of the treaty, the Prussian consul or vice-consul had jurisdiction, as judge or arbitrator, to determine, "without the interference" of the courts of this country; and such jurisdiction, when it exists, is, by such terms as these, exclusive. It is, however, claimed, that the present cause is not at all embraced within the treaty, for the reason, that it is a proceeding *in rem*, to enforce a maritime lien upon the vessel itself, and not a difference between the captain and crew; and, also, because the Prussian consul has no power to conduct and carry into effect a proceeding *in rem* for the enforcement of such a lien.

The treaty can receive no such narrow and technical construction. The master is the representative, in this port, of the vessel, and of all the interests concerned therein. He is plainly so regarded in the treaty. The matter in difference in this cause is the claim for wages.

That arises between the crew and the master, either as master, or as the representative here of vessel and owners. It is precisely that which is in litigation in this case. The lien, and the proceeding *in rem* against the vessel, appertain to the remedy, and only to the remedy. The very first step in this cause is to settle the matter in dispute. If the claim be established, then, as incident to the right to the wages, the lien and its enforcement against the vessel follow. The district court can have no jurisdiction of the lien, nor jurisdiction to enforce it, if it has no jurisdiction of the difference or dispute touching the claim for wages. To hold that the jurisdiction of the consul is confined to cases in which there is no maritime lien, and in which no libel of the vessel could, apart from the treaty, be maintained, is to take from the treaty very much of its substance. The existence of any lien, and of any right to charge the vessel, is in difference here. To say, that the treaty gives the consul jurisdiction of claims against the master *in personam*, and does not include a claim to remove the vessel itself from his custody, as the owner *pro hac vice*, or as the representative of all the interests therein, that the voyage may be broken up, and the vessel sold for the wages of the crew, and that an effort, by judicial proceeding, to do this, is not included in the terms, a difference arising between captain and crew, seems to me to destroy the very substance of the stipulation, and defeat its obvious purpose, to confine both masters and crews of Prussia to the rights and obligations of the Prussian laws, and compel obedience to its mandates. And, be it observed, the treaty gives the same protection to, and requires the like obedience by, the masters and crews of vessels of the United States. It does not add to the legal reasons for this view, but, if a vessel of the United States were sold in a port in Prussia, to pay the wages of its crew, alleged by the master not to be payable, and in repudiation of any right of the United States consul at that port to act as judge or arbitrator upon that claim, it would, at least, stimulate our quickness of apprehension to discover, and would incline us to insist, that the treaty intended to protect our shipowners against the application of foreign laws, and the decisions of foreign courts, to our vessels and the relations of the master and crews thereof.

To the suggestion, that the consul has no power to enforce the maritime lien, and cause the vessel to be sold, to satisfy the wages, if he should find that wages are due and payable, it is sufficient to say, that the treaty has been deliberately entered into, and has become the law for both nations. Each preferred to employ its own officers. The

power given to consuls to act as judge or arbitrator is not made final. The parties have the right of resort to the tribunals of their own country, without being concluded by the decisions of the consul. This was deemed a sufficient protection, and to afford, for the time being, a sufficient remedy to both master and crew; and it is not for this court to say, that the remedy here, by attachment of the vessel, will be more efficient and useful, and, on that ground, to apply it. Besides, this court can not know that the remedy by resort to the vessel is not, if it exists, so regulated in Prussia, that it was intended that her seamen should not invoke against the vessel the remedies permitted by our laws, under the mode of administration and rules of decision by which our courts are governed. And, further, under the expressed exception, which permits resort to local tribunals by consuls, &c., who may require their assistance to cause their decisions to be carried into effect or supported, it is plausible, at least, to say, that, if the consul decide, on a difference between captain and crew, that wages are payable, the power of the court to attach and condemn the vessel for their payment may be invoked to support and give effect to such decision.

Again, it is said, that, in this case, the captain and crew were not confronted before the counsel, witnesses were not examined, no adjudication in writing was made, but the consul only orally declared his judgment of the matter in difference, after hearing the statement of the master and the statement of the libellants, and then declared that he had nothing further to do therein. The proceeding does not, it is true, conform to our ideas of the requisites of a judicial proceeding; but, are the courts of this country to prescribe to the Prussian consul the forms and modes of proceeding which he must adopt when he acts as a judge or arbitrator between master and crew under this treaty? Must he follow the practice, and be governed by the rules, governing trials and arbitrations under our laws? Must our consuls in Prussia follow the rules and practice of the courts of that kingdom? If so, then the district court here was sitting as a court of error, to review the judgment or award of the Prussian consul. What can this court say are the formal requisites of a Prussian arbitration? It is manifest, by the reservation of the right to resort to the judicial tribunals of the home country, without being concluded by the decision of the consul, that the proceeding before him as an arbitrator or judge was intended to be summary, and its conduct left very much in his discretion; and, especially, it is manifest, that the nations respectively in-

tended to confide in their consul, and temporarily entrust to him the adjustment of differences between officer and crew of their vessel in the port of the other, and it was not intended that the courts of such other nation should sit in judgment upon the form or regularity, or the justice, of the acts of the consul, or interfere therewith in any manner. It was deemed safe and proper to leave to such consuls this temporary administration of the interests of their seamen abroad, assured that they would act with fairness and integrity therein, but yet giving the right of full and final investigation and adjudication at home, where home laws, home remedies, and home modes of investigation could be resorted to. The district court here not only passed upon the requisites of the proceeding as judicial, or as an arbitrament, but assumed to inquire into the details of the evidence, and the truth of the declared grounds upon which the vice-consul testified that he acted, and which he says were before him in the admissions of the crew—thus, in effect, reviewing the law and the facts which the consul made the basis of his decision.

It is claimed, that the consul did not act as judge or arbitrator to determine this case, and that, he not having taken jurisdiction, a proceeding in our courts is no interference in disregard of the treaty. It is by no means clear, that the attachment of the vessel, on the libel of the crew, is not, in itself, such an interference as precludes the action of the consul. But in this case, the argument disregards the clearly established fact, that the consul or his vice-consul (who is, in terms, included in the treaty, and whose acts in the matter the consul recognizes), did hear the parties respectively. On the statement of the case by the crew (who, whichever of them was the first speaker, had the opportunity to tell their story), he pronounced against them. On their own story, he decided that they had forfeited their wages, by the Prussian law, applied to their contract of shipment; and, afterwards, when this suit was commenced, he formally represents to the court, that he had already adjudicated the matter in difference, and claimed that his jurisdiction for that purpose is exclusive of the courts of this country. It was after such declaration of his decision to the crew, that he, knowing that the vessel was laid up, advised them to see the captain, and, by civil and conciliatory deportment, induce him to waive the forfeiture and pay the wages which had accrued. In the situation in which the vessel and her master then were, it is obvious, that, if the men had forfeited their wages (of which I here express

no opinion), their acts had wrought no great harm, the captain had no present need of the services of so many, and many considerations might properly have moved him to pay their wages and let them go. The advice of the consul indicated that he thought the loss of their service was no inconvenience to the captain and, even if wrong theretofore, they had claims to his consideration, while destitute and in a foreign country, which might and, perhaps, ought to induce him to pay their wages. This is all there is of the argument, that the consul himself regarded the crew as practically discharged.

I do not propose to examine the merits of the libellants' claim for wages. That they were, on the requisition of the consul, and without sufficient grounds therefor, held in prison as deserters, is most probable. That their departure from the vessel, and going ashore without leave, and against the will of the master (save as to one, who had his consent), is not desertion by our law, unless it was done without the intention to return, is, no doubt, true. That the master did not, in fact, consent to the discharge of any of them, is, I think, clear, while I think it in the highest degree probable, that, if this difficulty had not arisen, he would, in view of the laying up of the vessel, have consented to part with most of them.

I do not think it certain, that an imprisonment, on the requisition of the consul, though induced by a statement of the facts by the captain, operated to discharge the seamen from their articles, even though the imprisonment was not warranted by the facts. *Jordan v. Williams* [Case No. 7,528]. Nor is it certain that, under this treaty, and the act of March 2, 1829 (4 Stat. 359), a state magistrate can have no jurisdiction to arrest and detain a seaman charged as a deserter. True, the laws of the United States may not make it the duty of a state judge to act; but it does not follow, that, if he is included in the law, his acts will be without authority. There are many powers conferred upon state magistrates by the laws of the United States, which, if executed, are valid. Whether such magistrate is bound to accept the authority and act upon it, is another question. The act of 1829, in determining the duty, confers the power on "any court, judge, justice, or other magistrate having competent power, to issue warrants" to arrest, &c. See *Pars. Shipp. & Adm.* 102; *Kentucky v. Dennison*, 24 How. [65 U. S.] 66, 107, 108. It is apparent, that the requisition was given to the master to be delivered to the justice at Staten Island, who, as the captain informed the consul, then detained

the seamen; and if, as stated by counsel (though it does not appear as printed in the copy proofs handed to me), it was addressed to "any magistrate," &c., the power of the magistrate is not clearly wanting.

But all these and other questions go to the merits. They bear on the broad question, whether, under the terms of the shipping articles, and the Prussian rules contained in the navigation book, &c., the seamen had a right to their wages. The effect of the stipulation not to sue in a foreign country, which appears to be one of those rules, also, and what amounts to a discharge from the contract, actual or constructive, are questions on the merits; and the sympathy, which the condition of these men, penniless in a foreign land, whether with or without fault on their part, must awaken in every mind susceptible of human emotion, strongly inclines to a condemnation of the conduct of the master in this matter.

But I am constrained to the conclusion, that the treaty required that this matter in difference should have been left where, I think, the treaty with Prussia leaves it—in the hands, and subject to the determination, of their own public officer. The necessary result is the dismissal of the libels.

[NOTE. An application was afterwards made to the supreme court for a mandamus to compel the circuit court to pass upon the merits, but it was denied.]

UNITED STATES v. DIEKELMAN ¹

1. Unless treaty stipulations provide otherwise, a merchant vessel of one country visiting the ports of another for the purpose of trade, is, so long as she remains, subject to the laws which govern them.
2. Where, in time of war, a foreign vessel, availing herself of a proclamation of the President of May 12, 1862, entered the port of New Orleans, the blockade of which was not removed, but only relaxed in the interests of commerce, she thereby assented to the conditions imposed by such proclamation that she should not take out goods contraband of war, nor depart until cleared by the collector of customs according to law.
3. As New Orleans was then governed by martial law, a subject of a foreign power entering that port with his vessel under the special license of the proclamation became entitled to the same rights and privileges accorded under the same circumstances to loyal citizens of the United States. Restrictions placed upon them operated equally upon him.

¹92 U. S. Reports, 520.

4. Money, silver-plate, and bullion, when destined for hostile use or for the purchase of hostile supplies, are contraband of war. In this case, the determination of the question whether such articles, part of the outward-bound cargo of the vessel, were contraband, devolved upon the commanding general at New Orleans. Believing them to be so, he, in discharge of his duty, ordered them to be removed from her, and her clearance to be withheld until his order should be complied with.
5. Where the detention of the vessel in port was caused by her resistance to the orders of the properly constituted authorities whom she was bound to obey, she preferring such detention to a clearance upon the conditions imposed,—*Held*, that her owner, a subject of Prussia, is not "entitled to any damages" against the United States, under the law of nations or the treaty with that power. 8 Stat. 384.

Appeal from the Court of Claims.

Mr. Assistant Attorney-General Edwin B. Smith for the appellant.

Mr. J. D. McPherson, contra.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This suit was brought in the Court of Claims under the authority of a joint resolution of both Houses of Congress, passed May 4, 1870, as follows:

That the claim of E. Diekelman, a subject of the King of Prussia, for damages for an alleged detention of the ship "Essex" by the military authorities of the United States at New Orleans, in the month of September, 1862, be and is hereby referred to the Court of Claims for its decision in accordance with law, and to award such damages as may be just in the premises, if he may be found to be entitled to any damages.

Before this resolution was passed, the matter of the claim had been the subject of diplomatic correspondence between the governments of the United States and Prussia.

The following article, originally adopted in the treaty of peace between the United States and Prussia, concluded July 11, 1799 (8 Stat. 168), and revived by the treaty concluded May 1, 1828 (8 Stat. 384), was in force when the acts complained of occurred, to wit:

Art. XIII. And in the same case, if one of the contracting parties, being engaged in war with any other power, to prevent all the difficulties and misunderstandings that usually arise respecting merchandise of contraband, such as arms, ammunition and military stores of every kind, no such articles carried in the

vessels, or by the subjects or citizens of either party, to the enemies of the other, shall be deemed contraband so as to induce confiscation or condemnation, and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding; paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors; and it shall further be allowed to use in the service of the captors the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not, in that case, be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

When the *Essex* visited New Orleans, the United States were engaged in the war of the rebellion. The port of that city was, at the very commencement of the war, placed under blockade, and closed against trade and commercial intercourse; but, on the 12th of May, 1862, the President, having become satisfied that the blockade might "be safely relaxed with advantage to the interests of commerce," issued his proclamation, to the effect that from and after June 1 "commercial intercourse, * * * except as to persons, things, and information contraband of war," might "be carried on subject to the laws of the United States, and to the limitations, and in pursuance of the regulations * * * prescribed by the Secretary of the Treasury," and appended to the proclamation. These regulations, so far as they are applicable to the present case, are as follows:

1. To vessels clearing from foreign ports and destined to * * * New Orleans, * * * licenses will be granted by consuls of the United States upon satisfactory evidence that the vessels so licensed will convey no persons, property, or information contraband of war either to or from the said ports; which licenses shall be exhibited to the collector of the port to which said vessels may be respectively bound, immediately on arrival, and, if required, to any officer in charge of the blockade; and on leaving either of said ports every vessel will be required to have a clearance from the collector of the customs according to law, showing no violation of the conditions of the license. 12 Stat. 1264.

The *Essex* sailed from Liverpool for New Orleans June 19, 1862, and arrived August 24. New Orleans was then in possession of the military forces of the United States, with General Butler in command. The city was practically in a state of siege by land, but open by sea, and was under martial law.

The commanding general was expressly enjoined by the Government of the United States to take measures that no supplies went out of the port which could afford aid to the rebellion; and, pursuant to this injunction, he issued orders in respect to the exportation of money, goods, or property, on account of any person known to be friendly to the Confederacy, and directed the custom-house officers to inform him whenever an attempt was made to send any thing out which might be the subject of investigation in that behalf.

In the early part of September, 1862, General Butler, being still in command, was informed that a large quantity of clothing had been bought in Belgium on account of the Confederate government, and was lying at Matanoras awaiting delivery, because that government had failed to get the means they expected from New Orleans to pay for it; and that another shipment, amounting to a half million more, was delayed in Belgium from coming forward, because of the non-payment of the first shipment. He was also informed that it was expected the first payment would go forward through the agency of some foreign consuls; and this information afterwards proved to be correct.

He was also informed early in September by the custom-house officers, that large quantities of silver-plate and bullion were being shipped on the *Essex*, then loading for a foreign port, by persons, one of whom had declared himself an enemy of the United States, and none of whom would enroll themselves as friends; and he thereupon gave directions that the specified articles should be detained, and their exportation not allowed until further orders.

On the 15th September, the loading of the vessel having been completed, the master applied to the collector of the port for his clearance, which was refused in consequence of the orders of General Butler, but without any reasons being assigned by the collector. The next day, he was informed, however, that his ship would not be cleared unless certain specified articles which she had on board were taken out and landed. Much correspondence ensued between General Butler and the Prussian consul at New Orleans in reference to

the clearance, in which it was distinctly stated by General Butler that the clearance would not be granted until the specified goods were landed, and that it would be granted as soon as this should be done. Almost daily interviews took place between the master of the vessel and the collector, in which the same statements were made by the collector. The master refused to land the cargo, except upon the return of his bills of lading. Some of these bills were returned, and the property surrendered to the shipper. In another case, the shipper gave an order upon the master for his goods, and they were taken away by force. At a very early stage in the proceeding, the master and the Prussian consul were informed that the objection to the shipment of the articles complained of was that they were contraband.

A part only of the goods having been taken out of the vessel, a clearance was granted her on the 6th of October, and she was permitted to leave the port and commence her voyage.

Upon this state of facts, the Court of Claims gave judgment for Diekelman, from which the United States took an appeal.

One nation treats with the citizens of another only through their government. A sovereign cannot be sued in his own courts without his consent. His own dignity, as well as the dignity of the nation he represents, prevents his appearance to answer a suit against him in the courts of another sovereignty, except in performance of his obligations, by treaty or otherwise, voluntarily assumed. Hence, a citizen of one nation wronged by the conduct of another nation, must seek redress through his own Government.

His sovereign must assume the responsibility of presenting his claim, or it need not be considered. If this responsibility is assumed, the claim may be prosecuted as one nation proceeds against another, not by suit in the courts as of right, but by diplomacy, or, if need be, by war. It rests with the sovereign against whom the demand is made to determine for himself what he will do in respect to it. He may pay or reject it; he may submit to arbitration, open his own courts to suit, or consent to be tried in the courts of another nation. All depends upon himself.

In this case, Diekelman, claiming to have been injured by the alleged wrongful conduct of the military forces of the United States, made his claim known to his Government. It was taken into consideration, and became the subject of diplomatic correspondence between the two nations. Subsequently, Congress, by joint resolution,

referred the matter to the Court of Claims "for its decision according to law." The courts of the United States were thus opened to Diekelman for this proceeding. In this way the United States have submitted to the Court of Claims, and through that court upon appeal to us, the determination of the question of their legal liability under all the circumstances of this case for the payment of damages to a citizen of Prussia upon a claim originally presented by his sovereign in his behalf. This requires us, as we think, to consider the rights of the claimant under the treaty between the two Governments, as well as under the general law of nations. For all the purposes of its decision, the case is to be treated as one in which the Government of Prussia is seeking to enforce the rights of one of its citizens against the United States in a suit at law, which the two Governments have agreed might be instituted for that purpose. We shall proceed upon that hypothesis.

1. As to the general law of nations.

The merchant vessels of one country visiting the ports of another for the purposes of trade subject themselves to the laws which govern the port they visit, so long as they remain; and this as well in war as in peace, unless it is otherwise provided by treaty. *The Exchange v. McFaddon*, 7 Cranch, 116. When the *Essex* sailed from Liverpool, the United States were engaged in war. The proclamation under which she was permitted to visit New Orleans made it a condition of her entry that she should not take out goods contraband of war, and that she should not leave until cleared by the collector of customs according to law. Previous to June 1, she was excluded altogether from the port by the blockade. At that date the blockade was not removed, but relaxed only in the interests of commerce. The war still remained paramount, and commercial intercourse subordinate only. When the *Essex* availed herself of the proclamation and entered the port, she assented to the conditions imposed, and can not complain if she was detained on account of the necessity of enforcing her obligations thus assumed.

The law by which the city and port were governed was martial law. This ought to have been expected by Diekelman when he despatched his vessel from Liverpool. The place had been wrested from the possession of the enemy only a few days before the issue of the proclamation, after a long and desperate struggle. It was, in fact, a

garrisoned city, held as an outpost of the Union army, and closely besieged by land. So long as it remained in the possession of the insurgents, it was to them an important blockade-running point, and after its capture the inhabitants were largely in sympathy with the rebellion. The situation was, therefore, one requiring the most active vigilance on the part of the general in command. He was especially required to see that the relaxation of the blockade was not taken advantage of by the hostile inhabitants to promote the interests of the enemy. All this was matter of public notoriety; and Dieckelman ought to have known, if he did not in fact know, that although the United States had to some extent opened the port in the interests of commerce, they kept it closed to the extent that was necessary for the vigorous prosecution of the war. When he entered the port, therefore, with his vessel, under the special license of the proclamation, he became entitled to all the rights and privileges that would have been accorded to a loyal citizen of the United States under the same circumstances, but no more. Such restrictions as were placed upon citizens, operated equally upon him. Citizens were governed by martial law. It was his duty to submit to the same authority.

Martial law is the law of military necessity in the actual presence of war. It is administered by the general of the army, and is in fact his will. Of necessity it is arbitrary; but it must be obeyed. New Orleans was at this time the theatre of the most active and important military operations. The civil authority was overthrown. General Butler, in command, was the military ruler. His will was law, and necessarily so. His first great duty was to maintain on land the blockade which had theretofore been kept up by sea. The partial opening of the port toward the sea, made it all the more important that he should bind close the military lines on the shore which he held.

To this law and this Government the *Essex* subjected herself when she came into port. She went there for gain, and voluntarily assumed all the chances of the war into whose presence she came. By availing herself of the privileges granted by the proclamation, she, in effect, covenanted not to take out of the port "persons, things, or information contraband of war." What is contraband depends upon circumstances. Money and bullion do not necessarily partake of that character; but, when destined for hostile use or to procure hostile supplies, they do. Whether they are so or not, under the circum-

stances of a particular case, must be determined by some one when a necessity for action occurs. At New Orleans, when this transaction took place, this duty fell upon the general in command. Military commanders must act to a great extent upon appearances. As a rule, they have but little time to take and consider testimony before deciding. Vigilance is the law of their duty. The success of their operations depends to a great extent upon their watchfulness.

General Butler found on board this vessel articles which he had reasonable cause to believe, and did believe, were contraband, because intended for use to promote the rebellion. It was his duty, therefore, under his express instructions, to see that the vessel was not cleared with these articles on board; and he gave orders accordingly. It matters not now whether the property suspected was in fact contraband or not. It is sufficient for us that he had reason to believe, and in fact did believe, it to be contraband. No attempt has been made to show that he was not acting in good faith. On the contrary, it is apparent, from the finding of the court below, that the existing facts brought to his knowledge were such as to require his prompt and vigorous action in the presence of the imminent danger with which he was surrounded. Certainly, enough is shown to make it necessary for this plaintiff to prove the innocent character of the property before he can call upon the United States to respond to him in damages for the conduct of their military commander, upon whose vigilance they relied for safety.

Believing, then, as General Butler did, that the property was contraband, it was his duty to order it out of the ship, and to withhold her clearance until his order was complied with. He was under no obligation to return the bills of lading. The vessel was bound not to take out any contraband cargo. She took all the risks of this obligation when she assumed it, and should have protected herself in her contracts with shippers against the contingency of being required to unload after the goods were on board. If she failed in this, the consequences are upon her, and not the United States. She was operating in the face of war, the chances of which might involve her and her cargo in new complications. She voluntarily assumed the risks of her hazardous enterprise, and must sustain the losses that follow.

Neither does it affect the case adversely to the United States that the property had gone on board without objection from the custom-house officers or the military authorities. It is not shown that its

character was known to General Butler or the officers of the custom-house before it was loaded. The engagement of the vessel was not to leave until she had been cleared according to law, and that her clearance might be withheld until with reasonable diligence it could be ascertained that she had no contraband property on board. This is the legitimate effect of the provisions of the treasury regulations, entitling her to a license "upon satisfactory evidence" that she would "convey no persons, property, or information contraband of war, either to or from" the port: and requiring her not to leave until she had "a clearance from the collector of customs, according to law, showing no violation of the license." Her entry into the port was granted as a favor, not as a right, except upon the condition of assent to the terms imposed. If the collector of customs was to certify that the license she held had not been violated, it was his duty to inquire as to the facts before he made the certificate. Every opportunity for the prosecution of this inquiry must be given. Under the circumstances, the closest scrutiny was necessary. If, upon the examination preliminary to the clearance, prohibited articles were found on board, there could be no certificate such as was required, until their removal. It would then be for the vessel to determine whether she would remove the goods and take the clearance, or hold the goods and wait for some relaxation of the rules which detained her in port as long as she had them on board. General Butler only insisted upon her remaining until she removed the property. She elected to remain. There was no time when her clearance would not have been granted if the suspected articles were unloaded.

We are clearly of the opinion that there is no liability to this plaintiff resting upon the United States under the general law of nations.

2. As to the treaty.

The vessel was in port when the detention occurred. She had not broken ground, and had not commenced her voyage. She came into the waters of the United States while an impending war was flagrant, under an agreement not to depart with contraband goods on board. The question is not whether she could have been stopped and detained after her voyage had been actually commenced, without compensation for the loss, but whether she could be kept from entering upon the voyage and detained by the United States within their own waters, held by force against a powerful rebellion, until she had complied

with regulations adopted as a means of safety, and to the enforcement of which she had assented, in order to get there. In our opinion, no provision of the treaties in force between the two Governments interferes with the right of the United States, under the general law of nations, to withhold a custom-house clearance as a means of enforcing port regulations.

Art. XIII of the treaty of 1828 contemplates the establishment of blockades, and makes special provision for the government of the respective parties in case they exist. The vessels of one nation are bound to respect the blockades of the other. Clearly the United States had the right to exclude Prussian vessels in common with those of all other nations, from their ports altogether, by establishing and maintaining a blockade while subduing a domestic insurrection. The right to exclude altogether necessarily carries with it the right of admitting through an existing blockade upon conditions, and of enforcing in an appropriate manner the performance of the conditions after admission has been obtained. It will not be contended that a condition which prohibits the taking out of contraband goods is unreasonable, or that its performance may not be enforced by refusing a clearance until it has been complied with. Neither, in the absence of treaty stipulations to the contrary, can it be considered unreasonable to require goods to be unloaded, if their contraband character is discovered after they have gone on board. In the existing treaties between the two Governments there is no such stipulations to the contrary. In the treaty of 1799, Art. VI is as follows: "That the vessels of either party, loading within the ports or jurisdiction of the other, may not be uselessly harassed or detained, it is agreed that all examinations of goods required by the laws shall be made before they are laden on board the vessel, and that there shall be no examination after." While other articles in the treaty of 1799 were revived and kept in force by that of 1828, this was not. The conclusion is irresistible, that the high contracting parties were unwilling to continue bound by such a stipulation, and, therefore, omitted it from their new arrangement. It would seem to follow, that, under the existing treaty, the power of search and detention for improper practices continued, in time of peace even, until the clearance had been actually perfected and the vessel had entered on her voyage. If this be the rule in peace, how much more important is it in war for the prevention of the use of friendly vessels to aid the enemy.

Art. XIII of the treaty of 1799, revived by that of 1828, evidently has reference to captures and detentions after a voyage has commenced, and not to detentions in port, to enforce port regulations. The vessel must be "stopped" in her voyage, not detained in port alone. There must be "captors;" and the vessel must be in a condition to be "carried into port" or detained from "proceeding" after she has been "stopped," before this article can become operative. Under its provisions the vessel "stopped" might "deliver out the goods supposed to be contraband of war," and avoid further "detention." In this case there was no detention upon a voyage, but a refusal to grant a clearance from the port that the voyage might be commenced. The vessel was required to "deliver out the goods supposed to be contraband" before she could move out of the port. Her detention was not under the authority of the treaty, but in consequence of her resistance of the orders of the properly constituted port authorities, whom she was bound to obey. She preferred detention in port to a clearance on the conditions imposed. Clearly her case is not within the treaty. The United States, in detaining, used the right they had under the law of nations and their contract with the vessel, not one which, to use the language of the majority of the Court of Claims, they held under the treaty "by purchase" at a stipulated price.

As we view the case, the claimant is not "entitled to any damages" as against the United States, either under the treaty with Prussia or by the general law of nations.

The judgment of the Court of Claims is, therefore, reversed, and the cause remanded with directions to dismiss the petition.

NORTH GERMAN LLOYD S. S. CO. v. HEDDEN, COLLECTOR¹

[Same v. Magone, Collector]

(Circuit Court, D. New Jersey. May 21, 1890)

1. *Customs Duties—Construction of Laws—Tonnage Tax.*

Act Cong. June 26, 1884, sec. 14, which levies a duty of 3 cents per ton on all vessels "from any foreign port or place in North America, Central

¹43 Fed. Rep. 17.

America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the Sandwich Islands, or Newfoundland," and a duty of 6 cents per ton on vessels from other foreign ports, does not entitle German vessels sailing from European ports to enter our ports on payment of a duty of 3 cents per ton, under the treaties of December 20, 1827, and May 1, 1828, which stipulate that the United States shall not grant any particular favor regarding commerce or navigation to any other foreign nation which shall not immediately become common to Germany, since the discrimination contained in said act is merely geographical, and the 3-cent rate applies to vessels of all nations coming from the privileged ports.

2. *Treaties—Effect of Inconsistent Act of Congress.*

Where an Act of Congress is in conflict with a prior treaty the Act must control, since it is of equal force with the treaty and of later date.

3. *Constitutional Law—Commissioner of Navigation.*

Act Cong. July 5, 1884, sec. 3, which makes final the decision of the commissioner of navigation on all questions "relating to the collection of tonnage tax, and to the refunding of such tax, when collected erroneously or illegally," is constitutional.

At Law.

Samuel F. Bigelow and Henry C. Nevitt, for plaintiff.

Howard W. Hayes, Asst. U. S. Dist. Atty., for defendants.

WALES, J. The plaintiff, a duly organized corporation under the laws of the Hanseatic Republic of Bremen, which is a part of the German empire, is the owner of a line of ocean steamships, plying regularly between the ports of Bremen and New York, and brings these actions, under section 2931, Rev. Stats. U. S., to recover the amount of certain tonnage dues, alleged to have been unlawfully collected from said ships during the period extending from June 26, 1884, to July 28, 1888, and while the defendants were successively collectors of customs at the last named port. The vessels cleared from Bremen for New York via Southampton, England, stopping at or near the latter place temporarily, to discharge cargo and passengers, and to take on board additional cargo, passengers, and mails. The consignees of the vessels paid the dues, in every instance, under protest, and the plaintiff appealed to the Secretary of the Treasury, and finally, at the suggestion of the latter officer and with the concurrence of the department of justice, brought these actions to determine the authority of the defendants. The right of the plaintiff to recover depends upon the following statement of the law and facts: Prior to

the Act of Congress of June 26, 1884, entitled "An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade," tonnage tax was imposed upon German and all other vessels arriving in the United States from foreign ports, at the rate of 30 cents per ton per annum, and up to July 1st, of that year, it had been collected in a lump sum for a year at a time. But section 14 of the Act of 1884 changed the rate and mode of collection as follows:

That in lieu of the tax on tonnage of thirty cents per ton per annum heretofore imposed by law, a duty of three cents per ton, not to exceed in the aggregate fifteen cents per ton in any one year, is hereby imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the Sandwich Islands, or Newfoundland; and a duty of six cents per ton, not to exceed thirty cents per ton annum, is hereby imposed at each entry upon all vessels which shall be entered in the United States from any other foreign ports. 23 U. S. Stats. 57.

This section was amended by section 11 of the Act of Congress of June 19, 1886, entitled "An Act to abolish certain fees," etc. 24 U. S. Stats. 81. The amendment consisted in adding the following words to those just quoted:

Not, however, to include vessels in distress or not engaged in trade; provided, that the President of the United States shall suspend the collection of so much of the duty herein imposed on vessels entered from any foreign port as may be in excess of the tonnage and lighthouse dues, or other equivalent tax or taxes, imposed in said port on American vessels, by the Government of the foreign country in which such port is situated, and shall, upon the passage of this Act, and from time to time thereafter as often as it may become necessary, by reason of changes in the laws of the foreign countries above mentioned, indicate by proclamation the ports to which such suspension shall apply, and the rate or rates of tonnage duty, if any, to be collected under such suspension; provided further, that such proclamation shall exclude from the benefits of the suspension herein authorized, the vessels of any foreign country in whose ports the fees or dues of any kind or nature imposed on vessels of the United States, or the import or export duties on their cargoes, are in excess of the fees, dues, or duties imposed on the vessels of the country in which such port is situated, or on the cargoes of such vessels; and sections 4223

and 4224 and so much of section 4219 of the Revised Statutes as conflict with this section are hereby repealed.

Section 4219, title 48, chap. 3, Rev. Stats., referred to in the foregoing sub-proviso, provides that "nothing in this section shall be deemed * * * to impair any rights * * * under the law and treaties of the United States relative to the duty of tonnage vessels." Section 4227 of the same title and chapter is in these words:

Nothing contained in this title shall be deemed in any wise to impair any rights and privileges which have been or may be acquired by any foreign nation under the laws and treaties of the United States, relative to the duty on tonnage of vessels, or any other duty on vessels.

By article 9 of the treaty of December 20, 1827, between the United States and the Hanseatic Republics, "the contracting parties * * * engage mutually not to grant any particular favor to other nations, in respect of commerce and navigation, which shall not immediately become common to the other party." Public Treaties, 400. Article 9 of the Prussian-American treaty of May 1, 1828, (Public Treaties, 656,) contains a like stipulation. These treaties have been held by both the American and German Governments to be valid for all Germany. On the 26th of January, 1888, the President, in virtue of the authority vested in him by section 11 of the Act of June 19, 1886, issued his proclamation, wherein, after reciting that he had received satisfactory proof that no tonnage or lighthouse dues, or any equivalent tax or taxes whatever, are imposed upon American vessels entering the ports of the German Empire, either by the imperial Government or by the Government of the German maritime states, and that vessels belonging to the United States are not required, in German ports, to pay any fee or due of any kind or nature, or any import duty higher or other than is payable by German vessels or their cargoes, did "declare and proclaim that from and after the date of this my proclamation shall be suspended the collection of the whole of the duty of six cents per ton * * * upon vessels entered in the ports of the United States from any of the ports of the empire of Germany. * * * and the suspension hereby declared and proclaimed shall continue so long as the reciprocal exemption of vessels belonging to citizens of the United States and their cargoes shall be continued in the said ports of the empire of Germany, and no longer." The com-

missioner of navigation, in his circular letter No. 19, dated February 1, 1888, and approved by the Secretary of the Treasury, addressed to the collectors of customs and others, decided that the President's proclamation does not apply to vessels which entered before the date of the proclamation, and that only those German vessels "arriving directly from the ports of the German empire may be admitted under the proclamation without the payment of the dues therein mentioned." The commissioner of navigation claims authority to make this decision by virtue of section 3 of the Act of Congress of July 5, 1884, entitled "An Act to constitute a bureau of navigation in the Treasury Department," which reads as follows:

That the commissioner of navigation shall be charged with the supervision of the laws relating to the admeasurement of vessels, and the assigning of signal letters thereto, and of designating their official number; and on all questions of interpretation, growing out of the execution of the laws relating to these subjects, and relating to the collection of tonnage tax, and to the refunding of such tax when collected erroneously or illegally, his decision shall be final.

The plaintiff's vessels were German vessels, and on the 19th day of June, 1886, and thereafter until now, the Government of Germany exacted no tonnage tax or taxes whatever on vessels of the United States arriving in German ports.

Upon this statement of the law and the facts, the plaintiff's counsel contend (1) that as to the dues collected between June 26, 1884, and June 19, 1886, the plaintiff's vessels should not have been charged more than the lower rate of tonnage tax fixed by the Act of 1884, under the favored nation clause of the treaties, whereas the defendants charged six cents per ton; (2) that the dues collected after the passage of the Act of June 19, 1886, and prior to the President's proclamation, were excessive, for the same reason; (3) that no tonnage tax whatever could be lawfully collected of the vessels of the plaintiff, after the passage of the Act of June 19, 1886, because that Act went into effect immediately, and without waiting for the President's proclamation; (4) that the act of July 5, 1884, in so far as it confers on the commissioner of navigation the power of deciding finally on all questions of interpretation, growing out of the execution of the laws relating to the collection of tonnage tax, and the refund of the

same when illegally or erroneously collected, is unconstitutional and void.

As introductory to their argument, plaintiff's counsel referred to the policy of our Government in relation to the subject of navigation, which it is claimed has been from the beginning to establish entire reciprocity with other nations. The practice has been to ask for no exclusive privileges and to grant none, "but to offer to all nations and to ask from them entire reciprocity in navigation." 1 Kent, Comm. 34, note. This policy has been judicially recognized by the Supreme Court in *Oldfield v. Marriott*, 10 How. 146; and it is asserted that Congress had it in view in enacting the Acts of 1884 and 1886, imposing the tonnage taxes. The review presented by counsel of the legislative and diplomatic correspondence touching this subject is historically interesting and instructive, and would be persuasive in the case of a doubtful meaning of an Act of Congress, but it cannot be held to affect the interpretation of laws which are plain and unambiguous in their terms. The questions before the court must be determined by the ordinary and well-settled rules applicable to the construction of and validity of statutes.

Soon after the passage of the Act of June 26, 1884, claims were presented by the Government of Germany, and of other foreign powers, having similar treaty stipulations with the United States, in relation to navigation for the benefit of the three-cent rate of tax, under the favored nation clause. The claims having been referred to the Department of Justice, the attorney general, on the 19th of September, 1886, gave the following opinion:

The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act, and entered in our ports, is, I think, purely geographical in character, inuring to the advantage of any vessel of any power that may choose to fetch and carry between this country and any port embraced by the fourteenth section of the Act. I see no warrant, therefore, to claim that there is anything in the most "favored nation clause" of the treaty between this country and the powers mentioned that entitles them to have the privileges of the fourteenth section extended to their vessels sailing to this country from ports outside of the limitations of the act.

The construction thus given to the statute is clearly consistent with its terms, which grant the privilege of the minimum tax to all vessels entered in United States from certain specified foreign ports, and not

exclusively to the vessels of nations to whom those ports belong, or in whose territories the ports are situate, excepting the vessels of those governments only which, in the imposition of tonnage taxes, discriminate against American vessels. In accordance with this construction, it follows that no particular favor is conferred on any nation, and that, with the exception noted, the vessels of all nations, coming from the privileged ports are entered in the United States on an equal footing. Further discussion on this point would seem, therefore, to be fruitless; but it may be proper to observe that the construction of both the act of June 26, 1884, and that of June 19, 1886, and the complicated questions growing out of the claims of foreign governments, for the lower rate of tonnage tax by virtue of their treaty rights, were brought to the attention of congress by the President's message of January 14, 1889, transmitting a report of the Secretary of State in reference to the international questions arising from the imposition of differential tonnage dues upon vessels entering the United States from foreign countries. Ex. Doc-House Rep., 50th Cong., 3d Sess. The report, after mentioning the claims of the German minister for a reduction of the tax under the Act of 1884, and for a proper refund of the dues charged on German ships entering the United States from German ports since the date of the act of 1886, stated: "To this suggestion the undersigned was unable to respond, the matter being one for the consideration of Congress. But the request assuredly deserves equitable consideration." In respect to the claim now made by the plaintiff, that the course of its ships coming from Bremen to New York by the way of Southampton is not such as to deprive the run of its character of a voyage from a German port to a port in the United States, within the meaning of the Act of 1886, the report says:

But it has been held by the commissioner of navigation that the voyage can not be so regarded, and that the vessels must pay dues as coming from Southampton, a British port. Similar rulings have been made in respect to other vessels of different nationality.

And the report further adds:

Another instance of complication is that of a vessel starting from, we will say, a 6-30 cent port, and calling on her way to

the United States at a 3-15 cent port, and a free port. Other combinations will readily suggest themselves, and the need not be stated. But in each case the vessel is required to pay the highest rate, without reference to the amount of cargo obtained at the various ports from which she comes. Thus a penalty may practically be imposed in many cases on indirect voyages. It is conceived that in many instances the main purpose of the Act may be defeated by these rulings, but it must be admitted that the law contains no provision to meet such cases. * * * This appears to be a proper subject for the consideration of Congress.

From an examination of the above extracts from his report, it will be seen that the Secretary of State was of the opinion that the questions referred to were to be addressed to the political, and not to the judicial, branch of the government, and that Congress alone could be looked to for the redress of the class of wrongs complained of by the plaintiff, and to prevent their repetition. The plaintiff's counsel deny the correctness of the construction given to the act of 1884 by the attorney general, and insist that the difference in tonnage rates, by which certain ports specially named in the act are favored, is a particular favor to the countries to which those ports belong, "in respect to their commerce and navigation" which *ipso facto* accrues, in pursuance of treaty right, to German vessels coming from German ports. It is also asserted that the treaty stipulations with Germany are paramount to the later Acts of Congress, and that the former can not be annihilated by the latter. Admitting for the moment that the attorney general may have misconstrued the Act, still it cannot be questioned that, excepting where rights have become vested under a treaty, to use the expression of Judge SWAYNE, in the *Cherokee Tobacco Case*, 11 Wall. 616, "a treaty may supersede a prior Act of Congress and an Act of Congress may supersede a prior treaty." The commissioner of navigation held that the Acts of 1884 and 1886 were inconsistent with the treaties, and being of a later date must prevail, and in so ruling he is not without authority of adjudged cases. In *Foster v. Neilson*, 2 Pet. 314, Chief Justice MARSHALL, in delivering the opinion of the court, said:

Our constitution declares a treaty to be a law of the land. It is consequently to be regarded in the courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision. But when the

terms of the stipulation import a contract, when either of the parties engage to perform a particular act, the treaty addresses itself to the political, not the judicial, department and the legislature must execute the contract before it can become a rule for the court.

The same doctrine is held in *Taylor v. Morton*, 2 Curt. 454; *Ropes v. Clinch*, 8 Blatchf. 304. In the *Cherokee Tobacco Case*, *supra*, there was an open conflict between a treaty contract and a subsequent law, and the question was as to which should prevail. The 107th section of the Internal Revenue Act of July 20, 1868, provided "that the internal revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars shall be construed to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same be within a collection district or not." The tenth article of the treaty of 1866 between the United States and the Cherokee Nation of Indians stipulated as follows:

Every Cherokee Indian and freed person residing in the Cherokee Nation shall have the right to sell any products of his farm, including his or her livestock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying the tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory.

The collection officers had seized a quantity of tobacco belonging to the claimants which was found in the Cherokee Nation, outside of any collection District of the United States, and exemption from duty was claimed by virtue of the treaty. It was admitted that the repugnancy between the treaty and the statute was clear, and that they could not stand together; that one or the other must yield. The court decided that the language of the section was as clear and explicit as could be employed. It embraced indisputably the Indian Territory, and congress not having thought proper to exclude them, it was not for the court to make the exception; and that the consequences arising from the repeal of the treaty were matters for legislative and not judicial action, and if a wrong had been done, the power of redress was with congress and not with the judiciary. In *Taylor v. Morton*, the facts were these: Article 6 of the treaty of

1832, with Russia, stipulated that "no higher or other duties shall be imposed upon the importations into the United States of any article the produce or manufacture of Russia, than are or shall be payable on the like article being the produce or manufacture of any other foreign country." This was held by the court to be merely an agreement, to be carried into effect by Congress, and not to be enforced by the court, and that an Act of Congress laying a duty of \$25 a ton, on hemp from India, and \$40 a ton, on hemp from other countries, did not authorize the courts to decide that Russian hemp should be admitted at the lower rate. Such a promise, it was said, addresses itself to the political and not to the judicial department of the Government, and the courts can not try the question whether it has been observed or not. The court expressly declined to give any opinion on the merits of the case, holding that the questions, whether treaty obligations have been kept or not, and whether treaty promises shall be withdrawn or performed, are matters that belong to diplomacy and legislation, and not to the administration of the laws. If Congress has departed from the treaty, it is immaterial to inquire whether the departure was accidental or designed, and if the latter whether the reasons therefor were good or bad. If, by the act in question, they have not departed from the treaty, the plaintiff has no case. If they have, their act is the municipal law of the country, and any complaint, either by the citizen or the foreigner, must be made to those who alone are empowered by the constitution to judge of its grounds and act as may be suitable and just.

As to the time when the Act of June 19, 1886, went into operation, whether immediately from and after the date of its approval, or not until the date of the President's proclamation, and also whether the voyages of the plaintiff's vessels from Bremen to New York must be made "directly," and without stoppage at an intermediate port, in order to be exempted from the imposition and payment of tonnage dues, the decision of these questions by the commissioner of navigation must be held to be conclusive, unless so much of section 3 of the act of July 5, 1884, which makes his decision final in such matters, is unconstitutional. Much learning and ability have been employed by plaintiff's counsel to establish the invalidity of this portion of the act, which invests a department officer with such unlimited judicial power, and by which he is enabled to decide all contests in relation to alleged illegal dues, *ex parte*, and absolutely. On the other hand, the

labor and responsibility of the court have been increased by the omission of the defendant's counsel to furnish any assistance towards the solution of the questions, and permitting them to pass *sub silentio*. The subject, however, is not *res integra*. In *Cary v. Curtis*, 3 How. 236, the supreme court had under consideration the constitutionality of the third section of the act of congress of March 3, 1839, entitled "An Act making appropriations for the civil and diplomatic expenses of the Government for the year 1839," by which the Secretary of the Treasury was authorized to finally decide when more duties had been paid to any collector of customs, or to any person acting as such, than the law required, and to draw his warrant in favor of the person or persons entitled for a refund of the amounts so overpaid. The opinion of the court discusses very ably and at much length the questions involved in that case. A few sentences taken from the opinion will indicate the grounds upon which the validity of the Act of 1839 was sustained:

We have no doubt [say the court] of the objects or the import of that act. We can not doubt that it constitutes the Secretary of the Treasury the source whence instructions are to flow; that it controls both the position and the conduct of the collectors of the revenue; that it has denied to them any right or authority to retain any portion of the revenue for purposes of contestation or indemnity; has ordered and declared those collectors to be the mere organs of receipt and transfer, and has made the head of the treasury department the tribunal for the examination of claims for duties said to have been improperly paid. * * * It is contended, however, that the language and the purposes of Congress, if really what we hold them to be declared in the statute of 1839, can not be sustained, because they would be repugnant to the constitution, inasmuch as they would debar the citizen of his right to resort to the courts of justice. * * * The objection above referred to admits of the most satisfactory refutation. This may be found in the following positions, familiar in this and in most other governments, viz., that the Government, as a general rule, claims an exemption from being sued in its own courts. That although, as being charged with the administration of the laws, it will resort to those courts as means of securing this great end, it will not permit itself to be impleaded therein, save in instances forming conceded and express exceptions. Secondly, in the doctrine, so often ruled in this court, that the judicial power of the United States, although it has its origin in the constitution, is (except in enumerated instances, ap-

plicable exclusively to this court) dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court) for the exercise of the judicial power, and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to congress may seem proper for the public good. To deny this position would be to elevate the judicial over the legislative branch of the government, and to give to the former powers limited by its own discretion merely. It follows, then, that the courts created by statute must look to the statute as the warrant for their authority. * * * The courts of the United States are all limited in their nature and constitution, and have not the powers inherent in courts existing by prescription or by the common law. * * * The courts of the United States can take cognizance only of subjects assigned to them expressly or by necessary implication; *a fortiori*, they can take no cognizance of matters that by law are either denied to them, or expressly referred *ad aliud examen*.

This exposition of the origin and extent of the jurisdiction of the courts of the United States was reaffirmed in *Sheldon v. Sill*, 8 How. 449, where it was held that courts created by statute can have no jurisdiction but such as the statute confers. The right given by section 2931, Rev. Stat., to sue for overpaid dues is taken away by the Act of July 5, 1884, and the power to determine controversies arising from alleged exactions by collectors is deposited with the commissioner of navigation. Such is the effect of the decisions just cited, and which, as long as they are not overruled by the tribunal which made them, must be obeyed as the law of the land. The authorities referred to by plaintiff's counsel are cases where department officers, in making regulations to be observed by their subordinates, exceeded their statutory power, but in no one instance was it pretended that the officer was clothed with the power to make a final decision in contested matters. It was perhaps unnecessary, in view of *Cary v. Curtis*, and *Sheldon v. Sill*, that I should have done more than acquiesce in the doctrines there announced, and support the validity of the act of July 5, 1884, without further discussion, but the large amount of money involved in the present actions, and the earnestness and force with which the plaintiff's claims have been pressed, have induced me to make a more extended presentation of them than was at first designed. It must be borne in mind that this court is

not called on to express any opinion on the justice or expediency of placing such unlimited power in the hands of the commissioner of navigation as is conferred by the act of July 5, 1884. The duty of the court is to discover whether the act is in conflict with the constitution, and, on being satisfied that it is not, to judge accordingly. To pursue any other course would be not only extrajudicial, but also improper, in assuming to criticise the wisdom of Congress in making the law. Neither is the court required to say whether the commissioner of navigation is or is not correct in his interpretation of the law. Congress has seen fit to constitute him the final arbiter in certain disputes, and congress alone can supply a remedy for any wrong which may have arisen from his construction of the law relating to the collection of tonnage due. Let judgment be entered in each case for the defendant.

DISCONTO GESELLSCHAFT v. UMBREIT¹

ERROR TO THE CIRCUIT COURT OF MILWAUKEE COUNTY (BRANCH
No. 1)

STATE OF WISCONSIN

No. 63. Argued December 10, 11, 1907. Decided February 24, 1908.

It is too late to raise the Federal question on motion for rehearing in the state court, unless that court entertains the motion and expressly passes on the Federal question.

While aliens are ordinarily permitted to resort to our courts for redress of wrongs and protection of rights, the removal of property to another jurisdiction for adjustment of claims against it is a matter of comity and not of absolute right, and, in the absence of treaty stipulations, it is within the power of a State to determine its policy in regard thereto.

The refusal by a State to exercise comity in such manner as would impair the rights of local creditors by removing a fund to a foreign jurisdiction for administration does not deprive a foreign creditor of his property without due process of law or deny to him the equal protection of the law; and so held as to a judgment of the highest court of Wisconsin holding the attachment of a citizen of that State superior to an earlier attachment of a foreign creditor.

¹208 U. S. 570.

While the treaty of 1828 with Prussia has been recognized as being still in force by both the United States and the German Empire, there is nothing therein undertaking to change the rule of national comity that permits a country to first protect the rights of its own citizens in local property before permitting it to be taken out of its jurisdiction for administration in favor of creditors beyond its borders.

127 Wisconsin, 676, affirmed.

The facts are stated in the opinion.

Mr. F. C. Winkler for plaintiff in error:

The Federal questions on both points were brought before the Supreme Court of the State and claim made under them in the argument for rehearing. The motion was denied and opinion rendered expressly overruling the claim based on the treaties and by necessary implication, also the claim based on the Constitution of the United States.

The rulings upon them are therefore subject to review. *McKay v. Kalyton*, 204 U. S. 458; *Leigh v. Green*, 193 U. S. 79; *Columbia Water Power Co. v. Columbia Street Railway Co.*, 172 U. S. 465.

The plaintiff's suit was brought under the statutes of Wisconsin. The defendant was in Wisconsin. The property attached had been brought by him and placed on deposit in the State of Wisconsin. No court in the world could exercise jurisdiction either over his person or over his property except the courts of Wisconsin. No statute debar an alien from seeking justice in Wisconsin courts where the protection of his rights requires it.

The plaintiff is denied the benefit of the proceedings and of its judgment because being a foreigner it has no rights in the State of Wisconsin except such as "comity," which is "good nature," will accord it. Even under the ruling of the state court that the right of the plaintiff to pursue its absconding debtor into this country and to invoke the latter's remedial processes against him rests upon the comity, it is, however, the comity of the sovereignty, not of the court. Wharton, Conflict of Laws, Sec. 1a.

Comity can not be given or withheld at will. Civilization demands its exercise where justice requires it. It can not be denied, in whole or in part, except on clear, clean principles of justice.

Under the treaty between the United States and the Kingdom of Prussia, made in 1828, if a proper and liberal interpretation be given thereto, the plaintiff in error is entitled to the same standing in court

as a citizen of the United States would be in a like case. Public Treaties (Govt. Printing Office, 1875), p. 656; *Tucker v. Alexandroff*, 183 U. S. 424, 437. The cases cited by the Supreme Court of Wisconsin, viz.: *Eingartner v. Illinois Steel Co.*, 94 Wisconsin, 70; *Gardner v. Thomas*, 14 Johnson, 134; *Johnson v. Dalton*, 1 Cowen, 543; *DeWitt v. Buchanan*, 54 Barb. 31; *Olsen v. Schierenberg*, 3 Daly, 100; *Burdick v. Freeman*, 120 N. Y. 421, can easily be distinguished from the case at bar.

The state court erred in stating that plaintiff sues as the agent of a foreign trustee in bankruptcy. That trustee has and claims no rights to the bankrupt's property in Wisconsin. Foreign law does not operate on property beyond its jurisdiction. *Segnitz v. G. C. Banking & Trust Co.*, 117 Wisconsin, 171, 176.

The property in question was not transferred to the trustee and that left its legal title in the debtor. The plaintiff being a creditor brought suit on his own claim in his own right.

The circumstance that the creditor after suit commenced promised to turn over the proceeds he should recover to the trustee for distribution does not impair his rights as a creditor.

The course of the plaintiff in no way "sets at naught" the rule of our law that the trustee in bankruptcy does not obtain title to property in Wisconsin by reason of the proceedings in Germany. No claim is made on this score in the intervenor's answer.

The decision of the Supreme Court of Wisconsin deprives the plaintiff of its property rights without due process of law, in violation of the Constitution of the United States.

The judgment which the intervenor obtained, although in the form of the statute, is in point of fact no better than an *ex parte* affidavit. The defendant was to the intervenor's knowledge a prisoner in Germany. The only notice given was by publication of the summons in a Milwaukee paper. No copy of the summons and complaint was ever mailed to the defendant as required by Sec. 2640, Statutes of Wisconsin.

The defendant Terlinden, when the intervenor's suit was commenced against him, had not the slightest interest in the property sought to be reached. All his interest had passed to the plaintiff. The plaintiff was the only party adversely interested to the intervenor. It had an adjudicated lien good against all the world (except the claim of the intervenor).

An alien, too, is entitled to due process of law under the Constitution of the United States. *In re Ah Fung*, 3 Sawyer, 144; *Ah Kow v. Nunan*, 5 Sawyer, 562; *In re Ah Chung*, 2 Fed. Rep. 733.

The judgment against Terlinden was, as against this plaintiff, absolutely without process of law. It adjudicated nothing. The plaintiff was not a party therein, nor was it notified, and it had no opportunity to defend against it.

Mr. Joseph B. Doe for defendant in error:

Domestic creditors will be protected to the extent of not allowing the property or funds of a non-resident debtor to be withdrawn from the State before domestic creditors have been paid. Every country will first protect its own citizens. *Catlin v. Silver Plate Co.*, 123 Indiana, 477; *Chafey v. Fourth Nat. Bank*, 71 Main, 414, 524; *Bagby v. Railway Co.*, 86 Pa. St. 291; *Lycoming Fire Ins. Co. v. Wright*, 55 Vermont, 526; *Thruston v. Rosenfelt*, 42 Missouri, 474; *Willitts v. Waite*, 25 N. Y. 577.

Citizens and residents of the country where insolvency proceedings have been instituted are bound by such proceedings and can not pursue the property of the insolvent debtor in another country. *Cole v. Cunningham*, 133 U. S. 107; *Linville v. Hadden*, 88 Maryland, 594; *Chafey v. Fourth Nat. Bank*, *supra*; *Einer v. Beste*, 32 Missouri, 240; *Long v. Girdwood*, 150 Pa. St. 413; *Bacon v. Horne*, 123 Pa. St. 452.

A creditor, by proving his claim in bankruptcy or any insolvency proceedings, submits to the jurisdiction of the court in which the proceeding is pending and can not pursue his remedy elsewhere. *Clay v. Smith*, 3 Peters, 411; *Cooke v. Coyle*, 113 Massachusetts, 252; *Ormsby v. Dearborn*, 116 Massachusetts, 386; *Batchelder v. Batchelder*, 77 N. H. 31; *Wilson v. Capuro*, 41 California, 545; *Wood v. Hazen*, 10 Hun. 362.

Where both parties, plaintiff and defendant, are residents of a foreign State, the plaintiff can not come into our country and obtain an advantage by our law which he could not obtain by his own.

If he seeks to nullify the law of his own State and asks our courts to aid him in so doing, he can not have such assistance, if for no other reason than that it is forbidden by public policy and the comity which exists between states and nations, which comity will always be enforced when it does not conflict with the rights of domestic citizens. *Bacon v. Horne*, *supra*; *In re Waite*, 99 N. Y. 433; *Bagby v. Railway Co.*, *supra*.

Citizens of a foreign State or country will not be aided by the courts of this country to obtain, by garnishment, a preference of their claims against a foreign debtor, in disregard of proceedings in their own country for the sequestration of the debtor's estate and the appointment of a trustee thereof in bankruptcy. *Long v. Girdwood, supra.*

It is the uniform rule and doctrine of all courts that the principles of comity do not require that courts confer powers upon a foreign receiver or trustee in bankruptcy or permit him to bring and maintain actions in this State that interfere with and impair the rights of domestic creditors. *Humphreys v. Hopkins*, 81 California, 551; *Ward v. Pac. Mutual Life Ins. Co.*, 135 California, 235; *Hunt v. Columbian Ins. Co.*, 55 Maine, 290; *Pierce v. O'Brien*, 129 Massachusetts, 314; *Rogers v. Riley*, 80 Fed. Rep. 759; *Catlin v. Wilcox Silver Plate Co.*, 123 Indiana, 477.

Mr. Justice Day delivered the opinion of the court.

The Disconto Gesellschaft, a banking corporation of Berlin, Germany, began an action in the Circuit Court of Milwaukee County, Wisconsin, on August 17, 1901, against Gerhard Terlinden and at the same time garnisheed the First National Bank of Milwaukee. The bank appeared and admitted an indebtedness to Terlinden of \$6,420. The defendant in error Umbreit intervened and filed an answer, and later an amended answer.

A reply was filed, taking issue upon certain allegations of the answer, and a trial was had in the Circuit Court of Milwaukee County, in which the court found the following facts:

That on the 17th day of August, 1901, the above-named plaintiff, the Disconto Gesellschaft, commenced an action in this court against the above-named defendant, Gerhard Terlinden, for the recovery of damages sustained by the tort of the said defendant, committed in the month of May, 1901; that said defendant appeared in said action by A. C. Umbreit, his attorney, on August 19, 1901, and answered the plaintiff's complaint; that thereafter such proceedings were had in said action that judgment was duly given on February 19, 1904, in favor of said plaintiff, Disconto Gesellschaft, and against said defendant, Terlinden, for \$94,145.11 damages and costs; that \$85,371.49, with interest from March 26, 1904, is now due and unpaid thereon; that at the time of the commencement of said action, to wit, on August 17, 1901, process in garnishment was served on the above-named garnishee,

First National Bank of Milwaukee, as garnishee of the defendant Terlinden.

That on August 9, 1901, and on August 14, 1901, a person giving his name as Theodore Grafe deposited in said First National Bank of Milwaukee the equivalent of German money aggregating \$6,420.00 to his credit upon account; that said sum has remained in said bank ever since, and at the date hereof with interest accrued thereon amounted to \$6,969.47.

That the defendant Gerhard Terlinden and said Theodore Grafe, mentioned in the finding, are identical and the same person.

That the interpleaded defendant, Augustus C. Umbreit, on March 21, 1904, commenced an action in this court against the defendant Terlinden for recovery for services rendered between August 16, 1901, and February 1, 1903; that no personal service of the summons therein was had on the said summons therein was served by publication only and without the mailing of a copy of the summons and of complaint to said defendant; that said defendant did not appear therein; that on June 11, 1904, judgment was given in said action by default in favor of said Augustus C. Umbreit and against said defendant Terlinden for \$7,500 damages, no part whereof has been paid; that at the time of the commencement of said action process of garnishment was served, to wit, on March 22, 1904, on the garnishee, First National Bank of Milwaukee, as garnishee of said defendant Terlinden.

That the defendant Terlinden at all the times set forth in finding number one was and still is a resident of Germany; that about July 11, 1901, he absconded from Germany and came to the State of Wisconsin and assumed the name of Theodore Grafe; that on August 16, 1901, he was apprehended as a fugitive from justice upon extradition proceedings duly instituted against him, and was thereupon extradited to Germany.

That the above-named plaintiff, the Disconto Gesellschaft, at all the times set forth in the findings was, ever since has been and still is a foreign corporation, to wit, of Germany, and during all said time had its principal place of business in Berlin, Germany; that the above-named defendant, Augustus C. Umbreit, during all said times was and still is a resident of the State of Wisconsin.

That on or about the 27th day of July, 1901, proceedings in bankruptcy were instituted in Germany against said defendant Terlinden, and Paul Hecking appointed trustee of his estate in such proceedings on said date; that thereafter, and on or after August 21, 1901, the above-named plaintiff, the Disconto Gesellschaft, was appointed a member of the committee of creditors of the defendant Terlinden's personal estate, and accepted such ap-

pointment; and that the above-named plaintiff, the Disconto Gesellschaft, presented its claim to said trustee in said bankruptcy proceedings; that said claim had not been allowed by said trustee in January, 1902, and there is no evidence that it has since been allowed; that nothing has been paid upon said claim; that said claim so presented and submitted is the same claim upon which action was brought by the plaintiff in this court and judgment given, as set forth in finding No. 1; that said action was instituted by said plaintiff, the Disconto Gesellschaft, through the German consul in Chicago; and that the steps so taken by the plaintiff, the Disconto Gesellschaft, had the consent and approval of Dr. Paul Hecking as trustee in Bankruptcy, so appointed in the bankruptcy proceedings in Germany, and that after the commencement of the same the plaintiff, the Disconto Gesellschaft, agreed with said trustee that the moneys it should recover in said action should form part of the said estate in bankruptcy and be handed over to said trustee; that, among other provisions, the German bankrupt act contained the following: "Sec. 14. Pending the bankruptcy proceedings, neither the assets nor any other property of the bankrupt are subject to attachment or execution in favor of individual creditors."

Upon the facts thus found the Circuit Court rendered a judgment giving priority to the levy of the Disconto Gesellschaft for the satisfaction of its judgment out of the fund attached in the hands of the bank. Umbreit then appealed to the Supreme Court of Wisconsin. That court reversed the judgment of the Circuit Court, and directed judgment in favor of Umbreit, that he recover the sum garnisheed in the bank. 127 Wisconsin, 651. Thereafter a remittitur was filed in the Circuit Court of Milwaukee County and a final judgment rendered in pursuance of the direction of the Supreme Court of Wisconsin. This writ of error is prosecuted to reverse that judgment. At the same time a decree in an equity suit, involving a fund in another bank, was reversed and remanded to the Circuit Court. This case had been heard, by consent, with the attachment suit. With it we are not concerned in this proceeding.

No allegation of Federal rights appeared in the case until the application for rehearing. In this application it was alleged that the effect of the proceedings in the state court was to deprive the plaintiff in error of its property without due process of law, contrary to the Fourteenth Amendment, and to deprive it of certain rights and privileges guaranteed to it by treaty between the Kingdom of Prussia and

the United States. The Supreme Court of Wisconsin, in passing upon the petition for rehearing and denying the same, dealt only with the alleged invasion of treaty rights, overruling the contention of the plaintiff in error. 127 Wisconsin, 676. It is well settled in this court that it is too late to raise Federal questions reviewable here by motions for rehearing in the state court. *Pim v. St. Louis*, 165 U. S. 273; *Fullerton v. Texas*, 196 U. S. 192; *McMillen v. Ferrum Mining Company*, 197 U. S. 343, 347; *French v. Taylor*, 199 U. S. 274, 278. An exception to this rule is found in cases where the Supreme Court of the State entertains the motion and expressly passes upon the Federal question. *Mallett v. North Carolina*, 181 U. S. 589; *Leigh v. Green*, 193 U. S. 79.

Conceding that this record sufficiently shows that the Supreme Court heard and passed upon the Federal questions made upon the motion for rehearing, we will proceed briefly to consider them.

The suit brought by the Disconto Gesellschaft in attachment had for its object to subject the fund in the bank in Milwaukee to the payment of its claim against Terlinden. The plaintiff was a German corporation and Terlinden was a German subject. Umbreit, the intervenor, was a citizen and resident of Wisconsin. The Supreme Court of Wisconsin adjudged that the fund attached could not be subjected to the payment of the indebtedness due the foreign corporation as against the claim asserted to the fund by one of its own citizens, although that claim arose after the attachment by the foreign creditor; and, further, that the fact that the effect of judgment in favor of the foreign corporation would be, under the facts found, to remove the fund to a foreign country, there to be administered in favor of foreign creditors, was against the public policy of Wisconsin, which forbade such discrimination as against a citizen of that State.

Alien citizens, by the policy and practice of the courts of this country, are ordinarily permitted to resort to the courts for the redress of wrongs and the protection of their rights. 4 Moore, International Law Digest, § 536, p. 7; Wharton on Conflict of Laws, § 17.

But what property may be removed from a State and subjected to the claims of creditors of other States, is a matter of comity between nations and states and not a matter of absolute right in favor of creditors of another sovereignty, when citizens of the local state or country are asserting rights against property within the local jurisdiction.

"'Comity,' in the legal sense," says Mr. Justice Gray, speaking for this court in *Hilton v. Guyat*, 159 U. S. 113, 163, "is neither a matter of absolute obligation on the one hand nor of mere courtesy and good-will upon the other. But it is the recognition which one nation allows in its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws."

In the elaborate examination of the subject in that case many cases are cited and the writings of leading authors on the subject extensively quoted as to the nature, obligation and extent of comity between nations and states. The result of the discussion shows that how far foreign creditors will be protected and their rights enforced depends upon the circumstances of each case, and that all civilized nations have recognized and enforced the doctrine that international comity does not require the enforcement of judgment in such wise as to prejudice the rights of local creditors and the superior claims of such creditors to assert and enforce demands against property within the local jurisdiction. Such recognition is not inconsistent with that moral duty to respect the rights of foreign citizens which inheres in the law of nations. Speaking of the doctrine of comity, Mr. Justice Story says: "Every nation must be the final judge for itself, not only of the nature and extent of the duty, but of the occasion on which its exercises may be justly demanded." Story on Conflict of Laws, § 33.

The doctrine of comity has been the subject of frequent discussion in the courts of this country when it has been sought to assert rights accruing under assignments for the benefit of creditors in other States as against the demands of local creditors, by attachment or otherwise in the State where the property is situated. The cases were reviewed by Mr. Justice Brown, delivering the opinion of the court in *Security Trust Company v. Dodd, Mead & Co.*, 173 U. S. 624, and the conclusion reached that voluntary assignments for the benefit of creditors should be given force in other States as to property therein situate, except so far as they come in conflict with the rights of local creditors, or with the public policy of the State in which it is sought to be enforced; and, as was said by Mr. Justice McLean in *Oakey v. Bennett*, 11 How. 33, 44, "national comity does not require any government to give effect to such assignment [for the benefit of creditors] when it shall impair the remedies or lessen the securities of its own citizens."

There being, then, no provision of positive law requiring the recognition of the right of the plaintiff in error to appropriate property in the State of Wisconsin and subject it to distribution for the benefit of foreign creditors as against the demands of local creditors, how far the public policy of the State permitted such recognition was a matter for the State to determine for itself. In determining that the policy of Wisconsin would not permit the property to be thus appropriated to the benefit of alien creditors as against the demands of the citizens of the State, the Supreme Court of Wisconsin has done no more than has been frequently done by nations and states in refusing to exercise the doctrine of comity in such wise as to impair the right of local creditors to subject local property to their just claims. We fail to perceive how this application of a well known rule can be said to deprive the plaintiff in error of its property without due process of law.

Upon the motion for rehearing the plaintiff in error called attention to two alleged treaty provisions between the United States and the kingdom of Prussia, the first from the treaty of 1828, and the second from the treaty of 1799. As to the last mentioned treaty the following provision was referred to:

Each party shall endeavor by all the means in their power to protect and defend all vessels and other effects belonging to the citizens or subjects of the other, which shall be within the extent of their jurisdiction by sea or by land.

The treaty of 1799 expired by its own terms on June 2, 1810, and the provision relied upon is not set forth in so much of the treaty as was revived by article 12 of the treaty of May 1, 1828. See *Compilation of Treaties in Force*, 1904, prepared under resolution of the Senate, pp. 638 *et seq.* If this provision of the treaty of 1799 were in force we are unable to see that it has any bearing upon the present case.

Article one of the treaty of 1828 between the kingdom of Prussia and the United States is as follows:

There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective states shall mutually have liberty to enter the ports, places and rivers of the territories of each party

wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing.

This treaty is printed as one of the treaties in force in the compilation of 1904, p. 643, and has undoubtedly been recognized by the two governments as still in force since the formation of the German Empire. See *Terlinden v. Ames*, 184 U. S. 270; Foreign Relations of 1883, p. 369; Foreign Relations of 1885, pp. 404, 443, 444; Foreign Relations of 1887, p. 370; Foreign Relations of 1895, part one, 539.

Assuming, then, that this treaty is still in force between the United States and the German Empire, and conceding the rule that treaties should be liberally interpreted with a view to protecting the citizens of the respective countries in rights thereby secured, is there anything in this article which required any different decision in the Supreme Court of Wisconsin than that given? The inhabitants of the respective countries are to be at liberty to sojourn and reside in all parts whatsoever of said territories in order to attend to their affairs, and they shall enjoy, to that effect, the same security and protection as the natives of the country wherein they reside, upon submission to the laws and ordinances there prevailing. It requires very great ingenuity to perceive anything in this treaty provision applicable to the present case. It is said to be found in the right of citizens of Prussia to attend to their affairs in this country. The treaty provides that for that purpose they are to have the same security and protection as natives in the country wherein they reside. Even between States of the American Union, as shown in the opinion of Mr. Justice Brown in *Security Trust Co. v. Dodd, Mead & Co.*, 173 U. S. *supra*, it has been the constant practice not to recognize assignments for the benefit of creditors outside the State, where the same came in conflict with the rights of domestic creditors seeking to recover their debts against local property. This is the doctrine in force as against natives of the country residing in other states, and it is this doctrine which has been applied by the Supreme Court of Wisconsin to foreign creditors residing in Germany. In short, there is nothing in this treaty undertaking to change the well-recognized rule between states and nations

which permits a country to first protect the rights of its own citizens in local property before permitting it to be taken out of the jurisdiction for administration in favor of those residing beyond their borders.

The judgment of the Circuit Court of Milwaukee County entered upon the remittitur from the Supreme Court of Wisconsin is

Affirmed.

CASE OF THE APPAM¹

Supreme Court of the United States

Nos. 650 and 722.—OCTOBER TERM, 1916

Hans Berg, Prize Master in Charge of the
Prize Ship *Appam*, and L. M. von
Schilling, Vice-Consul of the German
Empire, Appellants,

650 *vs.*
British & African Steam Navigation Co.

Same,

722 *vs.*

Henry G. Harrison, Master of the Steam-
ship *Appam*.

Appeals from the Dis-
trict Court of the
United States for the
Eastern District of
Virginia.

[March 6, 1917.]

Mr. Justice DAY delivered the opinion of the Court.

These are appeals from the District Court of the United States for the Eastern District of Virginia, in two admiralty cases. No. 650 was brought by the British & African Steam Navigation Company, Limited, owner of the British steamship, *Appam*, to recover possession of that vessel. No. 722 was a suit by the master of the *Appam* to recover possession of the cargo. In each of the cases the decree was in favor of the libellant.

The facts are not in dispute and from them it appears: That during the existence of the present war between Great Britain and Germany, on the 15th day of January, 1916, the steamship *Appam* was captured

¹Print of the Reporter of the Supreme Court of the United States.

on the high seas by the German cruiser *Moewe*. The *Appam* was a ship under the British flag, registered as an English vessel, and is a modern cargo and passenger steamship of 7,800 tons burden. At the time of her capture she was returning from the West Coast of Africa to Liverpool, carrying a general cargo of cocoa beans, palm oil, kernels, tin, maize, sixteen boxes of specie, and some other articles. At the West African port she took on 170 passengers, eight of whom were military prisoners of the English Government. She had a crew of 160 or thereabouts, and carried a three-pound gun at the stern. The *Appam* was brought to by a shot across her bows from the *Moewe*, when about a hundred yards away, and was boarded without resistance by an armed crew from the *Moewe*. This crew brought with them two bombs, one of which was slung over the bow and the other over the stern of the *Appam*. An officer from the *Moewe* said to the captain of the *Appam* that he was sorry he had to take his ship, asked him how many passengers he had, what cargo, whether he had any specie, and how much coal. When the shot was fired across the bows of the *Appam*, the captain instructed the wireless operator not to touch the wireless instrument, and his officers not to let any one touch the gun on board. The officers and crew of the *Appam*, with the exception of the engine-room force, thirty-five in number, and the second officer, were ordered on board the *Moewe*. The captain, officers and crew of the *Appam* were sent below, where they were held until the evening of the 17th of January, when they and about 150 others, officers and crews of certain vessels previously sunk by the *Moewe*, were ordered back to the *Appam* and kept there as prisoners. At the time of the capture, the senior officer of the boarding party told the chief engineer of the *Appam* he was now a member of the German navy; if he did not obey orders his brains would be blown out, but if he obeyed, not a hair of his head should be touched. The *Appam's* officer was instructed to tell his staff the same thing, and if they did not obey orders they would be brought to the German officer and shot. Inquiries were made by the German officer in command of the *Appam* as to revolutions of the engines, the quantity of coal on hand and the coal consumption for different speeds, and instructions were given that steam be kept up handy, and afterwards the engineer was directed to set the engines at the revolutions required, and the ship got under way.

Lieutenant Berg, who was the German officer in command of the *Appam* after its capture, told the engineer on the second morning that he was then in charge of the ship, asked of him information as to fuel consumption, and said that he expected the engineer to help him all he could, and the more he did for him the better it would be for everybody on the ship. The engineer said he would, and did so. The engines were operated with a bomb secured to the port main injector valve, and a German sailor stationed alongside the bomb with a revolver. There was a guard below of four or five armed Germans, who were relieved from time to time, but did not interfere with the working of the ship. The German officer, Lieutenant Berg, gave directions as to working the engines, and was the only officer on board who wore a uniform.

On the night of the capture, the specie in the specie-room was taken on board the *Moewe*. After Lieutenant Berg took charge of the *Appam*, bombs were slung over her bow and stern, one large bomb, said to contain about two hundred pounds of explosive, was placed on the bridge, and several smaller ones in the chart room. Lieutenant Berg informed the captain of the *Appam*, pointing to one of the bombs, "That is a bomb; if there is any trouble, mutiny, or attempt to take the ship, I have orders to blow up the ship instantly." He also said, "There are other bombs about the ship; I do not want to use them, but I shall be compelled to if there is any trouble." The bombs were kept in the positions stated until the ship arrived at the Virginia Capes, when they were removed. Lieutenant Berg, on reaching Hampton Roads, asked the crew of the *Appam* to drop the anchor, as he had not men to do it.

During the trip to the westward, the officers and crew of the *Appam* were not allowed to see the ship's compass to ascertain her course, and all lights were obscured during the voyage. The German prisoners, with the exception of two who went on board the *Moewe*, were armed and placed over the passengers and crew of the *Appam* as a guard all the way across. For two days after the capture, the *Appam* remained in the vicinity of the *Moewe*, and then was started westward. Her course for the first two or three days was southwesterly, and afterwards westerly, and was continued until her arrival at the Virginia Capes on the 31st of January. The engine-room staff of the *Appam* was on duty operating the vessel across to the United States;

the deck crew of the *Appam* kept the ship clean, and the navigation was conducted entirely by the Germans, the lookouts being mostly German prisoners.

At the time of the capture, the *Appam* was approximately distant 1,590 miles from Emden, the nearest German port; from the nearest available port, namely, Punchello, in the Madeiras, 130 miles; from Liverpool, 1,450 miles; and from Hampton Roads, 3,051 miles. The *Appam* was found to be in first class order, seaworthy, with plenty of provisions, both when captured and at the time of her arrival in Hampton Roads.

The order or commission delivered to Lieutenant Berg by the commander of the *Moewe* is as follows:

Information for the American Authorities. The bearer of this, Lieutenant of the Naval Reserve, Berg, is appointed by me to the command of the captured English steamer *Appam* and has orders to bring the ship into the nearest American harbor and there to lay up. Kommando S. M. H. *Moewe*. Count Zu Dohna, Cruiser Captain and Commander. (Imperial Navy Stamp.) Kommando S. M. S. *Moewe*.

Upon arrival in Hampton Roads, Lieutenant Berg reported his arrival to the Collector, and filed a copy of his instructions to bring the *Appam* into the nearest American port and there to lay up.

On February 2nd, His Excellency, The German Ambassador, informed the State Department of the intention, under alleged treaty rights, to stay in an American port until further notice, and requested that the crew of the *Appam* be detained in the United States for the remainder of the war.

The prisoners brought in by the *Appam* were released by order of the American Government.

On February 16th, and sixteen days after the arrival of the *Appam* in Hampton Roads, the owner of the *Appam* filed the libel in case No. 650, to which answer was filed on March 3rd. On March 7th, by leave of court, an amended libel was filed, by which the libellant sought to recover the *Appam* upon the claim that holding and detaining the vessel in American waters was in violation of the law of nations and the laws of the United States and of the neutrality of the United States. The answer of the respondents to the amended libel alleged that the *Appam* was brought in as a prize by a prize master,

in reliance upon the Treaty of 1799 between the United States and Prussia; that by the general principles of international law the prize master was entitled to bring his ship into the neutral port under these circumstances, and that the length of stay was not a matter for judicial determination; and that proceedings had been instituted in a proper prize court of competent jurisdiction in Germany for the condemnation of the *Appam* as a prize of war; and averred that the American court had no jurisdiction.

The libel against the *Appam's* cargo was filed on March 13th, 1916, and answer filed on March 31st. During the progress of the case, libellant moved the court to sell a part of the cargo as perishable; on motion the court appointed surveyors, who examined the cargo and reported that the parts so designated as perishable should be sold; upon their report orders of sale were entered, under which such perishable parts were sold, and the proceeds of that sale, amounting to over \$600,000, are now in the registry of the court, and the unsold portions of the cargo are now in the custody of the marshal of the Eastern District of Virginia.

The argument in this case has taken wide range, and orally and in printed briefs counsel have discussed many questions which we do not consider necessary to decide in determining the rights involved in these appeals.

From the facts which we have stated, we think the decisive questions resolve themselves into three: First, was the use of an American port, under the circumstances shown, a breach of this Nation's neutrality under the principles of international law. Second, was such use of an American port justified by the existing treaties between the German Government and our own. Third, was there jurisdiction and right to condemn the *Appam* and her cargo in a court of admiralty of the United States.

It is familiar international law that the usual course after the capture of the *Appam* would have been to take her into a German port, where a prize court of that Nation might have adjudicated her status, and, if it so determined, condemned the vessel as a prize of war. Instead of that, the vessel was neither taken to a German port, nor to the nearest port accessible of a neutral power, but was ordered to, and did, proceed over a distance of more than three thousand miles, with a view to laying up the captured ship in an American port.

It was not the purpose to bring the vessel here within the privileges universally recognized in international law, *i. e.*, for necessary fuel or provisions, or because of stress of weather or necessity of repairs, and to leave as soon as the cause of such entry was satisfied or removed. The purpose for which the *Appam* was brought to Hampton Roads, and the character of the ship, are emphasized in the order which we have quoted to take her to an American port and there lay her up and in a note from His Excellency, The German Ambassador, to the Secretary of State, in which the right was claimed to keep the vessel in an American port until further notice. (Diplomatic Correspondence with Belligerent Governments Relating to Neutral Rights and Duties, Department of State, European War No. 3, page 331,) and a further communication from the German Ambassador forwarding a memorandum of a telegram from the German Government concerning the *Appam* (*Id.* page 333), in which it was stated:

Appam is not an auxiliary cruiser but a prize. Therefore she must be dealt with according to Article 19 of the Prusso-American treaty of 1799. Article 21 of Hague Convention concerning neutrality at sea is not applicable, as this convention was not ratified by England and is therefore not binding in present war according to Article 28. The above-mentioned Article 19 authorizes a prize ship to remain in American ports as long as she pleases. Neither the ship nor the prize crew can therefore be interned nor can there be question of turning the prize over to English.

In view of these facts, and this attitude of the Imperial Government of Germany, it is manifest that the *Appam* was not brought here in any other character than as a prize, captured at sea by a cruiser of the German navy, and that the right to keep her here, as shown in the attitude of the German Government and in the answer to the libel, was rested principally upon the Prussian-American Treaty of 1799.

The principles of international law recognized by this Government, leaving the treaty aside, will not permit the ports of the United States to be thus used by belligerents. If such use were permitted, it would constitute of the ports of a neutral country harbors of safety into which prizes, captured by one of the belligerents, might be safely brought and indefinitely kept.

From the beginning of its history this country has been careful to

maintain a neutral position between warring governments, and not to allow the use of its ports in violation of the obligations of neutrality; nor to permit such use beyond the necessities arising from the perils of the seas or the necessities of such vessels as to seaworthiness, provisions and supplies. Such usage has the sanction of international law, Dana's Note to Wheaton on International Law, 1866, 8th American Edition, Section 391, and accords with our own practice. Moore's Digest of International Law, Vol. 7, 936, 937, 938.

A policy of neutrality between warring nations has been maintained from 1793 to this time. In that year President Washington firmly denied the use of our ports to the French Minister for the fitting out of privateers to destroy English commerce. This attitude led to the enactment of the Neutrality Act of 1794, afterwards embodied in the Act of 1818, enacting a code of neutrality, which among other things inhibited the fitting out and arming of vessels; the augmenting or increasing of the force of armed vessels; or the setting on foot in our territory of military expeditions; and empowering the President to order foreign vessels of war to depart from our ports and compelling them so to do when required by the law of nations. Moore on International Arbitrations, v. 4, 3967 *et seq.*

This policy of the American Government was emphasized in its attitude at the Hague Conference of 1907. Article 21 of the Hague Treaty provides:

A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

Article 22 provides:

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

To these articles, adherence was given by Belgium, France, Austria-Hungary, Germany, the United States, and a number of other nations.

They were not ratified by the British Government. This Government refused to adhere to Article 23, which provides:

A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestered pending the decision of a Prize court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

And in the proclamation of the convention the President recited the resolution of the Senate adhering to it,

"subject to the reservation and exclusion of its Article 23 and with the understanding that the last clause of Article 3 thereof implies the duty of a neutral Power to make the demand therein mentioned for the return of a ship captured within the neutral jurisdiction and no longer within that jurisdiction." 36 Stat., Pt. II, p. 2438.

While this treaty may not be of binding obligation, owing to lack of ratification, it is very persuasive as showing the attitude of the American Government when the question is one of international law; from which it appears clearly that prizes could only be brought into our ports upon general principles recognized in international law, on account of unseaworthiness, stress of weather, or want of fuel or provisions, and we refused to recognize the principle that prizes might enter our ports and roadsteads, whether under convoy or not, to be sequestered pending the decision of a prize court. From the history of the conference it appears that the reason for the attitude of the American delegates in refusing to accept Article 23 was that thereby a neutral might be involved in participation in the war to the extent of giving asylum to a prize which the belligerent might not be able to conduct to a home port. See Scott on Peace Conferences, 1899-1907, Vol. II, p. 237 *et seq.*

Much stress is laid upon the failure of this Government to proclaim that its ports were not open to the reception of captured prizes, and it is argued that having failed to interdict the entrance of prizes into

our ports permission to thus enter must be assumed. But whatever privilege might arise from this circumstance it would not warrant the attempted use of one of our ports as a place in which to store prizes indefinitely, and certainly not where no means of taking them out are shown except by the augmentation of her crew, which would be a clear violation of established rules of neutrality.

As to the contention on behalf of the appellants that Article XIX of the Treaty of 1799 justifies bringing in and keeping the *Appam* in an American port, in the situation which we have outlined, it appears that in response to a note from His Excellency, The German Ambassador, making that contention, the American Secretary of State, considering the treaty, announced a different conclusion (Diplomatic Correspondence with Belligerent Governments, *supra*, page 335 *et seq.*); and we think this view is justified by a consideration of the terms of the treaty. Article XIX of the Treaty of 1799, using the translation adopted by the American State Department, reads as follows:

The vessels of war, public and private, of both parties, shall carry (*conduire*) freely, wheresoever they please, the vessels and effects taken (*pris*) from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes (*priscs*) be arrested, searched or put under legal process, when they come to and enter the ports of the other party, but may freely be carried (*conduites*) out again at any time by their captors (*le vaisseau preneur*) to the places expressed in their commissions, which the commanding officer of such vessel (*le dit vaisseau*) shall be obliged to show. [But conformably to the treaties existing between the United States and Great Britain, no vessel (*vaisseau*) that shall have made a prize (*prise*) upon British subjects shall have a right to shelter in the ports of the United States, but if (*il est*) forced therein by tempests, or any other danger or accident of the sea, they (*il sera*) shall be obliged to depart as soon as possible.] (The provision concerning the treaties between the United States and Great Britain is no longer in force, having been omitted by the Treaty of 1828. See Compilation of Treaties in Force, 1904, pages 641 and 646.)

We think an analysis of this article makes manifest that the permission granted is to vessels of war and their prizes, which are not to be arrested, searched, or put under legal process, when they come into the ports of the high contracting parties, to the end that they may

be freely carried out by their captors to the places expressed in their commissions, which the commanding officer is obliged to show. When the *Appam* came into the American harbor she was not in charge of a vessel of war of the German Empire. She was a merchant vessel, captured on the high seas and sent into the American port with the intention of being kept there indefinitely, and without any means of leaving that port for another as contemplated in the treaty, and required to be shown in the commission of the vessel bringing in the prize. Certainly such use of a neutral port is very far from that contemplated by a treaty which made provision only for temporary asylum for certain purposes, and can not be held to imply an intention to make of an American port a harbor of refuge for captured prizes of a belligerent government. We can not avoid the conclusion that in thus making use of an American port there was a clear breach of the neutral rights of this Government, as recognized under principles of international law governing the obligations of neutrals, and that such use of one of our ports was in no wise sanctioned by the Treaty of 1799.

It remains to inquire whether there was jurisdiction and authority in an admiralty court of the United States, under these circumstances, to order restoration to an individual owner of the vessel and cargo.

The earliest authority upon this subject in the decisions of this court is found in the case of *Glass v. The Sloop Betsy*, 3 Dallas, 6, decided in 1794, wherein it appeared that the commander of the French privateer, *The Citizen Genet*, captured as a prize on the high seas the sloop *Betsy* and sent the vessel into Baltimore, where the owners of the sloop and cargo filed a libel in the District Court of Maryland, claiming restitution because the vessel belonged to subjects of the King of Sweden, a neutral power, and the cargo was owned jointly by Swedes and Americans. The District Court denied jurisdiction, the Circuit Court affirmed the decree, and an appeal was prosecuted to this court. The unanimous opinion was announced by Mr. Chief Justice Jay, holding that the District Courts of the United States possessed the powers of courts of admiralty, whether sitting as an instance or as a prize court, and sustained the jurisdiction of the District Court of Maryland, and held that that court was competent to inquire into and decide whether restitution should be made to the complainants conformably to the laws of nations and the treaties and laws of the United States.

The question came again before this court in the case of *The Santissima Trinidad*, decided in 1822, reported in 7 Wheaton, 283. In that case it was held that an illegal capture would be invested with the character of a tort, and that the original owners were entitled to restitution when the property was brought within our jurisdiction. The opinion was delivered by Mr. Justice Story, and, after a full discussion of the matter, the court held that such an illegal capture, if brought into the jurisdiction of the courts of the United States, was subject to condemnation and restitution to the owners, and the learned justice said:

If, indeed, the question were entirely new, it would deserve very grave consideration, whether a claim founded on a violation of our neutral jurisdiction could be asserted by private persons, or in any other manner than a direct intervention of the government itself. In the case of a capture made within a neutral territorial jurisdiction, it is well settled, that as between the captors and the captured, the question can never be litigated. It can arise only upon a claim of the neutral sovereign asserted in his own Courts or the Courts of the power having cognizance of the capture itself for the purposes of prize. And by analogy to this course of proceeding, the interposition of our own government might seem fit to have been required before cognizance of the wrong could be taken by our Courts. But the practice from the beginning in this class of causes, a period of nearly 30 years, has been uniformly the other way; and it is now too late to disturb it. If any inconvenience should grow out of it, from reasons of state policy or executive discretion, it is competent for Congress to apply at its pleasure the proper remedy. (Page 349.)

. . . . Whatever may be the exemption of the public ship herself, and of her armament and munitions of war, the prize property which she brings into our ports is liable to the jurisdiction of our Courts, for the purpose of examination and inquiry, and if a proper case be made out, for restitution to those whose possession has been devested by a violation of our neutrality; and if the goods are landed from the public ship in our ports, by the express permission of our own government, that does not vary the case, since it involves no pledge that if illegally captured they shall be exempted from the ordinary operation of our laws. (Page 354.)

In the subsequent cases in this court this doctrine has not been departed from. *L'Invincible*, 1 Wheaton, 238, 258; *The Estrella*, 4

Wheaton, 298, 308, 9, 10, 11; *La Amistad de Rues*, 5 Wheaton, 385, 390.

It is insisted that these cases involve illegal captures at sea, or violations of neutral obligation, not arising because of the use of a port by sending in a captured vessel and keeping her there in violation of our rights as a neutral. But we are at a loss to see any difference in principle between such cases and breaches of neutrality of the character here involved in undertaking to make of an American port a depository of captured vessels with a view to keeping them there indefinitely. Nor can we consent to the insistence of counsel for appellant that the Prize Court of the German Empire has exclusive jurisdiction to determine the fate of the *Appam* as lawful prize. The vessel was in an American port and under our practice within the jurisdiction and possession of the District Court which had assumed to determine the alleged violation of neutral rights, with power to dispose of the vessel accordingly. The foreign tribunal under such circumstances could not oust the jurisdiction of the local court and thereby defeat its judgment. *The Santissima Trinidad*, *supra*, p. 355.

Were the rule otherwise than this court has frequently declared it to be, our ports might be filled in case of a general war such as is now in progress between the European countries, with captured prizes of one or the other of the belligerents, in utter violation of the principles of neutral obligation which have controlled this country from the beginning.

The violation of American neutrality is the basis of jurisdiction, and the admiralty courts may order restitution for a violation of such neutrality. In each case the jurisdiction and order rests upon the authority of the courts of the United States to make restitution to private owners for violations of neutrality where offending vessels are within our jurisdiction, thus vindicating our rights and obligations as a neutral people.

It follows that the decree in each case must be

Affirmed.

A true copy.

Test:

Clerk Supreme Court, U. S.



**Extracts from a Proclamation by the President of the United States,
August 22, 1870¹**

Whereas a state of war unhappily exists between France on the one side and the North German Confederation and its allies on the other side; and

Whereas the United States are on terms of friendship and amity with all the contending powers and with the persons inhabiting their several dominions; and

Whereas great numbers of the citizens of the United States reside within the territories or dominions of each of the said belligerents and carry on commerce, trade, or other business or pursuits therein, protected by the faith of treaties; and

Whereas great numbers of the subjects or citizens of each of the said belligerents reside within the territory or jurisdiction of the United States and carry on commerce, trade, or other business or pursuits therein; and

Whereas the laws of the United States, without interfering with the free expression of opinion and sympathy, or with the open manufacture or sale of arms or munitions of war, nevertheless impose upon all persons who may be within their territory and jurisdiction the duty of an impartial neutrality during the existence of the contest:

Now, therefore, I, Ulysses S. Grant, President of the United States, in order to preserve the neutrality of the United States and of their citizens and of persons within their territory and jurisdiction, and to enforce their laws, and in order that all persons, being warned of the general tenor of the laws and treaties of the United States in this behalf and of the law of nations, may thus be prevented from an unintentional violation of the same, do hereby declare and proclaim that by the act passed on the 20th day of April, A. D. 1818, commonly known as the "neutrality law," the following Acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to wit:

And I do further declare and proclaim that by the nineteenth article of the treaty of amity and commerce which was concluded between

¹VII Richardson: Messages and Papers of the Presidents, 86.

His Majesty the King of Prussia and the United States of America on the 11th day of July, A. D. 1799, which article was revived by the treaty of May 1, A. D. 1828, between the same parties, and is still in force, it was agreed that "the vessels of war, public and private, of both parties shall carry freely, wheresoever they please, the vessels and effects taken from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes be arrested, searched, or put under legal process when they come to and enter the ports of the other party, but may freely be carried out again at any time by their captors to the places expressed in their commissions, which the commanding officer of such vessel shall be obliged to show."

And I do further declare and proclaim that it has been officially communicated to the Government of the United States by the envoy extraordinary and minister plenipotentiary of the North German Confederation at Washington that private property on the high seas will be exempted from seizure by the ships of His Majesty the King of Prussia, without regard to reciprocity.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 22d day of August, A. D. 1870, and of the Independence of the United States of America the ninety-fifth.

[Seal.] U. S. GRANT.

By the President:

HAMILTON FISH.

Secretary of State.

Case of the William P. Frye¹

The Secretary of State to Ambassador Gerard

[Telegram]

No 1446.]

DEPARTMENT OF STATE,

Washington, March 31, 1915.

You are instructed to present the following note to the German Foreign Office:

Under instructions from my Government I have the honor to present a claim for \$228,059.54, with interest from January 28, 1915, against the German Government on behalf of the owners and captain of the American sailing vessel *William P. Frye* for damages suffered by them on account of the destruction of that vessel on the high seas by the German armed cruiser *Prinz Eitel Friedrich*, on January 28, 1915.

The facts upon which this claim arises and by reason of which the German Government is held responsible by the Government of the United States for the attendant loss and damages are briefly as follows:

The *William P. Frye*, a steel sailing vessel of 3,374 tons gross tonnage, owned by American citizens and sailing under the United States flag and register, cleared from Seattle, Wash., November 4, 1914, under charter to M. H. Houser, of Portland, Oreg., bound for Queens-town, Falmouth, or Plymouth for orders, with a cargo consisting solely of 186,950 bushels of wheat owned by the aforesaid Houser and consigned "unto order or to its assigns," all of which appears from the ship's papers which were taken from the vessel at the time of her destruction by the commander of the German cruiser.

On January 27, 1915, the *Prinz Eitel Friedrich* encountered the *Frye* on the high seas, compelled her to stop, and sent on board an armed boarding party, who took possession. After an examination of the ship's papers the commander of the cruiser directed that the cargo be thrown overboard, but subsequently decided to destroy the vessel, and on the following morning, by his order, the *Frye* was sunk.

The claim of the owners and captain consists of the following items:

¹Official Print of the Department of State.

Value of ship, equipment, and outfit.....	\$150,000.00
Actual freight as per freight list, 5034 1000/2240 tons at 32-6—£8180-19-6 at \$4.86	39,759.54
Traveling and other expenses of Capt. Kiehne and Arthur Sewall & Co., agents of ship, in connection with mak- ing affidavits, preparing and filing claim.....	500.00
Personal effects of Capt. H. H. Kiehne.....	300.00
Damages covering loss due to deprivation of use of ship..	37,500.00
Total	\$228,059.54

By direction of my Government, I have the honor to request that full reparation be made by the German Government for the destruction of the *William P. Frye* by the German cruiser *Prinz Eitel Friedrich*.

BRYAN.

Ambassador Gerard to the Secretary of State

No. 1984.]

AMERICAN EMBASSY,
Berlin, April 5, 1915.

The following is translation of the reply of the Foreign Office to my note of April 3:

GERMAN FOREIGN OFFICE,
Berlin, April 5, 1915.

The undersigned has the honor to make reply to the note of His Excellency, Mr. James W. Gerard, Ambassador, the United States of America, dated the 3d instant, foreign office No. 2892, relative to claims for damages for the sinking of the American merchant vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich*.

According to the reports which have reached the German Government the commander of the *Prinz Eitel Friedrich* stopped the *William P. Frye* on the high seas January 27, 1915, and searched her. He found on board a cargo of wheat consigned to Queenstown, Falmouth, or Plymouth to order. After he had first tried to remove the cargo from the *William P. Frye* he took the ship's papers and her crew on board and sank ship.

It results from these facts that the German commander acted quite in accordance with the principles of international law as laid down in the Declaration of London and the German prize ordinance. The ports of Queenstown, Falmouth, and Plymouth, whither the ship visited was bound, are strongly fortified English coast places, which, moreover, serve as bases for the British naval forces. The cargo of wheat being food or foodstuffs, was conditional contraband within the

meaning of article 24, No. 1, of the Declaration of London, and article 23, No. 1, of the German prize ordinance, and was therefore to be considered as destined for the armed forces of the enemy, pursuant to articles 33 and 34 of the Declaration of London and articles 32 and 33 of the German prize ordinance, and to be treated as contraband pending proof of the contrary. This proof was certainly not capable of being adduced at the time of the visiting of the vessel, since the cargo papers read to order. This, however, furnished the conditions under which, pursuant to article 49 of the Declaration of London and article 113 of the German prize ordinance the sinking of the ship was permissible, since it was not possible for the auxiliary cruiser to take the prize into a German port without involving danger to its own security or the success of its operations. The duties devolving upon the cruiser before destruction of the ship, pursuant to article 50 of the Declaration of London and article 116 of the German prize ordinance, were fulfilled by the cruiser in that it took on board all the persons found on the sailing vessel, as well as the ship's papers.

The legality of the measures taken by the German commander is furthermore subject to examination by the German prize court pursuant to article 51 of the Declaration of London and section 1, No. 2, of the German Code of Prize Procedure. These prize proceedings will be instituted before the prize court at Hamburg as soon as the ship's papers are received and will comprise the settlement of questions whether the destruction of the cargo and the ship was necessary within the meaning of article 49 of the Declaration of London; whether the property sunk was liable to capture; and whether, or to what extent, indemnity is to be awarded the owners. In the trial the owners of ship and cargo would be at liberty, pursuant to article 34, paragraph 3, of the Declaration of London, to adduce proof that the cargo of wheat had an innocent destination and did not, therefore, have the character of contraband. If such proof is not adduced, the German Government would not be liable for any compensation whatever, according to the general principles of international law.

However, the legal situation is somewhat different in the light of the special stipulations applicable to the relations between Germany and the United States since article 13 of the Prussian-American treaty of friendship and commerce of July 11, 1799, taken in connection with article 12 of Prussian-American treaty of commerce and navigation of May 1, 1828, provides that contraband belonging to the subjects or citizens of either party can not be confiscated by the other in any case but only detained or used in consideration of payment of the full value of the same. On the ground of this treaty stipulation which is as a matter of course binding on the German prize court the American owners of ship and cargo would receive compensation even if the court should declare the cargo of wheat to be contraband. Nevertheless the approaching prize proceedings are not rendered superfluous since the competent prize court must examine into the legality of the

capture and destruction and also pronounce upon the standing of the claimants and the amount of indemnity.

The undersigned begs to suggest that the ambassador bring the above to the knowledge of his Government and avails himself, etc.

(Signed) JAGOW.

April 4, 1915.

GERARD.

The Secretary of State to Ambassador Gerard
No. 1583.]

DEPARTMENT OF STATE,
Washington, April 28, 1915.

You are instructed to present the following note to the German Foreign Office:

In reply to Your Excellency's note of the 5th instant, which the Government of the United States understands admits the liability of the Imperial German Government for the damages resulting from the sinking of the American sailing vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich* on January 28 last, I have the honor to say, by direction of my Government, that while the promptness with which the Imperial German Government has admitted its liability is highly appreciated, my Government feels that it would be inappropriate in the circumstances of this case, and would involve unnecessary delay to adopt the suggestion in your note that the legality of the capture and destruction, the standing of the claimants, and the amount of indemnity should be submitted to a prize court.

Unquestionably the destruction of this vessel was a violation of the obligations imposed upon the Imperial German Government under existing treaty stipulations between the United States and Prussia, and the United States Government, by virtue of its treaty rights, has presented to the Imperial German Government a claim for indemnity on account of the resulting damages suffered by American citizens. The liability of the Imperial German Government and the standing of the claimants as American citizens and the amount of indemnity are all questions which lend themselves to diplomatic negotiation between the two Governments, and happily the question of liability has already been settled in that way. The status of the claimants and the amount of the indemnity are the only questions remaining to be settled, and it is appropriate that they should be dealt with in the same way.

The Government of the United States fully understands that, as stated in your excellency's note, the German Government is liable under the treaty provisions above mentioned for the damages arising from the destruction of the cargo as well as from the destruction of the vessel. But it will be observed that the claim under discussion

does not include damages for the destruction of the cargo, and the question of the value of the cargo therefore is not involved in the present discussion.

The Government of the United States recognizes that the German Government will wish to be satisfied as to the American ownership of the vessel, and the amount of the damages sustained in consequence of her destruction.

These matters are readily ascertainable and if the German Government desires any further evidence in substantiation of the claim on these points in addition to that furnished by the ship's papers, which are already in the possession of the German Government, any additional evidence found necessary will be produced. In that case, however, inasmuch as any evidence which the German Government may wish to have produced is more accessible and can more conveniently be examined in the United States than elsewhere, on account of the presence there of the owners and captain of the *William P. Frye* and their documentary records, and other possible witnesses, the Government of the United States ventures to suggest the advisability of transferring the negotiations for the settlement of these points to the Imperial German embassy at Washington.

In view of the admission of liability by reason of specific treaty stipulations, it has become unnecessary to enter into a discussion of the meaning and effect of the Declaration of London, which is given some prominence in Your Excellency's note of April 5, further than to say that, as the German Government has already been advised, the Government of the United States does not regard the Declaration of London as in force.

BRYAN.

Ambassador Gerard to the Secretary of State

[Telegram]

No. 2391.]

AMERICAN EMBASSY,

Berlin, June 7, 1915.

The following is the text of the reply of the German Government in the *Frye* case:

The undersigned has the honor to make the following reply to the note of His Excellency Mr. James W. Gerard, Ambassador of the United States of America, dated April 30, 1915 (F. O. No. 3291), on the subject of the sinking of the American sailing vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich*:

The German Government can not admit that, as the American Government assumes, the destruction of the sailing vessel mentioned

constitutes a violation of the treaties concluded between Prussia and the United States at an earlier date and now applicable to the relations between the German Empire and the United States or of the American rights derived therefrom. For these treaties did not have the intention of depriving one of the contracting parties engaged in war of the right of stopping the supply of contraband to his enemy when he recognizes the supply of such articles as detrimental to his military interests. On the contrary, Article 13 of the Prussian-American Treaty of July 11, 1799, expressly reserves to the party at war the right to stop the carrying of contraband and to detain the contraband; it follows then that if it can not be accomplished in any other way, the stopping of the supply may in the extreme case be effected by the destruction of the contraband and of the ship carrying it. As a matter of course, the obligation of the party at war to pay compensation to the interested persons of the neutral contracting party remains in force whatever be the manner of stopping the supply.

According to general principles of international law, any exercise of the right of control over the trade in contraband is subject to the decision of the Prize Courts, even though such right may be restricted by special treaties. At the beginning of the present war Germany, pursuant to these principles, established by law prize jurisdiction for cases of the kind under consideration. The case of the *William P. Frye* is likewise subject to the German prize jurisdiction, for the Prussian-American Treaties mentioned contain no stipulation as to how the amount of the compensation provided by Article 13 of the treaty cited is to be fixed. The German Government, therefore, complies with its treaty obligations to a full extent when the Prize Courts instituted by it in accordance with international law proceed in pursuance of the treaty stipulations and thus award the American interested persons equitable indemnity. There would, therefore, be no foundation for a claim of the American Government, unless the Prize Courts should not grant indemnity in accordance with the treaty; in such an event, however, the German Government would not hesitate to arrange for equitable indemnity notwithstanding. For the rest, prize proceedings in the case of the *Frye* are indispensable, apart from the American claims, for the reason that other claims of neutral and enemy interested parties are to be considered in the matter.

As was stated in the note of April 4 last, the Prize Court will have to decide the questions whether the destruction of the ship and cargo was legal; whether and under what conditions the property sunk was liable to confiscation, and to whom and in what amount indemnity is to be paid provided application therefor is received. Since the decision of the Prize Court must first be awaited before any further position is taken by the German Government, the simplest way for the American interested parties to settle their claims would be to enter them in the competent quarter in accordance with the provisions of the German Code of Prize Procedure.

The undersigned begs to suggest that the ambassador bring the above to the knowledge of his Government, and avails himself at the same time of the opportunity to renew the assurances of his most distinguished consideration.

(Signed.) v. JAGOW.

GERARD.

The Secretary of State to Ambassador Gerard

[Telegram]

No. 1868.]

DEPARTMENT OF STATE,
Washington, June 24, 1915.

You are instructed to present the following note to the German Minister of Foreign Affairs:

I have the honor to inform Your Excellency that I duly communicated to my Government your note of the 7th instant on the subject of the claim presented in my note of April 3d last, on behalf of the owners and captain of the American sailing vessel *William P. Frye* in consequence of her destruction by the German auxiliary cruiser *Prinz Eitel Friedrich*.

In reply I am instructed by my Government to say that it has carefully considered the reasons given by the Imperial German Government for urging that this claim should be passed upon by the German Prize Court instead of being settled by direct diplomatic discussion between the two Governments, as proposed by the Government of the United States, and that it regrets to find that it can not concur in the conclusions reached by the Imperial German Government.

As pointed out in my last note to you on this subject, dated April 30, the Government of the United States has considered that the only question under discussion was the method which should be adopted for ascertaining the amount of the indemnity to be paid under an admitted liability, and it notes with surprise that in addition to this question the Imperial German Government now desires to raise some questions as to the meaning and effect of the treaty stipulations under which it has admitted its liability.

If the Government of the United States correctly understands the position of the Imperial German Government as now presented, it is that the provisions of Article 13 of the Treaty of 1799 between the United States and Prussia, which is continued in force by the Treaty of 1828, justified the commander of the *Prinz Eitel Friedrich* in sinking the *William P. Frye*, although making the Imperial German Government liable for the damages suffered in consequence, and that inasmuch as the treaty provides no specific method for ascertaining the

amount of indemnity to be paid, that question must be submitted to the German Prize Court for determination.

The Government of the United States, on the other hand, does not find in the treaty stipulations mentioned any justification for the sinking of the *Frye*, and does not consider that the German Prize Court has any jurisdiction over the question of the amount of indemnity to be paid by the Imperial German Government on account of its admitted liability for the destruction of an American vessel on the high seas.

You state in your note of the 7th instant that Article 13 of the above-mentioned treaty of 1799 "expressly reserves to the party at war the right to stop the carrying of contraband and to detain the contraband; it follows then that if it can not be accomplished in any other way, the stopping of the supply may in the extreme case be effected by the destruction of the contraband and of the ship carrying it."

The Government of the United States can not concur in this conclusion. On the contrary, it holds that these treaty provisions do not authorize the destruction of a neutral vessel in any circumstances. By its express terms the treaty prohibits even the detention of a neutral vessel carrying contraband if the master of the vessel is willing to surrender the contraband. Article 13 provides "in the case supposed of a vessel stopped for articles of contrabands if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage."

In this case the admitted facts show that pursuant to orders from the commander of the German cruiser, the master of the *Frye* undertook to throw overboard the cargo of that vessel, but that before the work of delivering out the cargo was finished the vessel with the cargo was sunk by order of the German commander.

For these reasons, even if it be assumed as Your Excellency has done, that the cargo was contraband, your contention that the destruction of the vessel was justified by the provisions of Article 13 does not seem to be well founded. The Government of the United States has not thought it necessary in the discussion of this case to go into the question of the contraband or non-contraband character of the cargo. The Imperial German Government has admitted that this question makes no difference so far as its liability for damages is concerned, and the result is the same so far as the justification for the sinking of the vessel is concerned. As shown above, if we assume that the cargo was contraband, the master of the *Frye* should have been allowed to deliver it out, and the vessel should have been allowed to proceed on her voyage.

On the other hand, if we assume that the cargo was noncontraband, the destruction either of the cargo or the vessel could not be justified in the circumstances of this case under any accepted rule of interna-

tional law. Attention is also called to the provisions of Article 12 of the Treaty of 1785 between the United States and Prussia, which, like Article 13 of the Treaty of 1799, was continued in force by Article 12 of the Treaty of 1828. So far as the provisions of Article 12 of the Treaty of 1785 apply to the question under consideration, they are as follows:

"If one of the contracting parties should be engaged in war with any other Power, the free intercourse and commerce of the subjects or citizens of the party remaining neuter with the belligerent Powers shall not be interrupted. On the contrary, in that case, as in full peace the vessels of the neutral party may navigate freely to and from the ports and on the coasts of the belligerent parties, free vessels making free goods, insomuch that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party, although such things belong to an enemy of the other."

It seems clear to the Government of the United States, therefore, that whether the cargo of the *Frye* is regarded as contraband or as non-contraband, the destruction of the vessel was, as stated in my previous communication on this subject, "a violation of the obligations imposed upon the Imperial German Government under existing treaty stipulations between the United States and Prussia."

For these reasons the Government of the United States must disagree with the contention which it understands is now made by the Imperial German Government that an American vessel carrying contraband may be destroyed without liability or accountability beyond the payment of such compensation for damages as may be fixed by a German Prize Court. The issue thus presented arises on a disputed interpretation of treaty provisions, the settlement of which requires direct diplomatic discussion between the two Governments, and can not properly be based upon the decision of the German Prize Court, which is in no way conclusive or binding upon the Government of the United States.

Moreover, even if no disputed question of treaty interpretation was involved, the admission by the Imperial German Government of its liability for damages for sinking the vessel would seem to make it unnecessary, so far as this claim is concerned, to ask the Prize Court to decide "whether the destruction of the ship and cargo was legal, and whether and under what conditions the property sunk was liable to confiscation," which, you state in your note dated June 7, are questions which should be decided by the Prize Court. In so far as these questions relate to the cargo, they are outside of the present discussion, because, as pointed out in my previous note to you on the subject dated April 30, "the claim under discussion does not include damages for the destruction of the cargo."

The real question between the two Governments is what reparation must be made for a breach of treaty obligations, and that is not a question which falls within the jurisdiction of a Prize Court.

In my first note on the subject the Government of the United States requested that "full reparation be made by the Imperial German Government for the destruction of the *William P. Frye*." Reparation necessarily includes an indemnity for the actual pecuniary loss sustained, and the Government of the United States takes this opportunity to assure the Imperial German Government that such an indemnity, if promptly paid, will be accepted as satisfactory reparation, but it does not rest with a Prize Court to determine what reparation should be made or what reparation would be satisfactory to the Government of the United States.

Your Excellency states in your note of June 7 that in the event the Prize Court should not grant indemnity in accordance with the treaty requirements, the German Government would not hesitate to arrange for equitable indemnity, but it is also necessary that the Government of the United States should be satisfied with the amount of the indemnity, and it would seem to be more appropriate and convenient that an arrangement for equitable indemnity should be agreed upon now rather than later. The decision of the Prize Court, even on the question of the amount of indemnity to be paid, would not be binding or conclusive on the Government of the United States.

The Government of the United States also dissents from the view expressed in your note that "there would be no foundation for a claim of the American Government unless the Prize Courts should not grant indemnity in accordance with the treaty." The claim presented by the American Government is for an indemnity for a violation of a treaty, in distinction from an indemnity in accordance with the treaty, and therefore is a matter for adjustment by direct diplomatic discussion between the two Governments and is in no way dependent upon the action of a German Prize Court.

For the reasons above stated the Government of the United States can not recognize the propriety of submitting the claim presented by it on behalf of the owners and captain of the *Frye* to the German Prize Court for settlement.

The Government of the United States is not concerned with any proceedings which the Imperial German Government may wish to take on "other claims of neutral and enemy interested parties" which have not been presented by the Government of the United States, but which you state in your note of June 7 make Prize Court proceedings in this case indispensable, and it does not perceive the necessity for postponing the settlement of the present claim pending the consideration of those other claims by the Prize Court.

The Government of the United States, therefore, suggests that the Imperial German Government reconsider the subject in the light of these considerations, and because of the objections against resorting to the Prize Court the Government of the United States renews its

former suggestion that an effort be made to settle this claim by direct diplomatic negotiations.

LANSING.

Ambassador Gerard to the Secretary of State

[Telegram]

No. 2656.]

AMERICAN EMBASSY,
Berlin, July 30, 1915.

Following note received:

FOREIGN OFFICE, *Berlin, July 30, 1915.*

The undersigned has the honor to inform His Excellency, Mr. James W. Gerard, Ambassador of the United States of America, in reply to the note of the 26th ultimo, Foreign Office No. 3990, on the subject of the sinking of the American merchant vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich*, that the points of view brought out in the note have been carefully examined by the Imperial German Government. This examination has led to the following conclusions:

The Government of the United States believes that it is incumbent upon it to take the position that the treaty rights to which America is entitled, as contained in Article 12 of the Prussian-American treaty of amity and commerce of September 10, 1785, in Article 13 of the Prussian-American treaty of amity and commerce of July 11, 1799, were violated by the sinking of the *William P. Frye*. It interprets these articles as meaning that a merchantman of the neutral contracting party carrying contraband can not in any circumstances be destroyed by a war-ship of the belligerent contracting party, and that the sinking of the *William P. Frye* was, therefore, in violation of the treaty, even if her cargo should have consisted of contraband, which it leaves outside of the discussion.

The German Government can not accept this view. It insists as heretofore that the commander of the German auxiliary cruiser acted in the legal exercise of the right of control of trade in contraband enjoyed by war-ships of belligerent nations, and that the treaty stipulations mentioned merely oblige the German Government to make compensation for the damage sustained by the American citizens concerned.

It is not disputed by the American Government that, according to general principles of international law, a belligerent is authorized in sinking neutral vessels under almost any conditions for carrying contraband. As is well known, these principles were laid down in Articles 49 and 50 of the Declaration of London, and were recognized at that time by the duly empowered delegates of all the nations which par-

ticipated in the conference, including the American delegates, to be declarative of existing international law (see preliminary clause of the Declaration of London); moreover, at the beginning of the present war, the American Government proposed to the belligerent nations to ratify the Declaration of London and give its provisions formal validity also.

The German Government has already explained in its note of April 4 last for what reasons it considers that the conditions justifying the sinking under international law were present in the case of the *William P. Frye*. The cargo consisted of conditional contraband, the destination of which for the hostile armed forces was to be presumed under the circumstances; no proof to overcome this presumption has been furnished. More than half the cargo of the vessel was contraband, so that the vessel was liable to confiscation. The attempt to bring the American vessel into a German port would have greatly imperiled the German vessel in the given situation of the war, and at any rate practically defeated the success of her further operations. Thus the authority for sinking the vessel was given according to general principles of international law.

There only remains then to be examined the question how far the Prussian-American treaty stipulations modify these principles of international law.

In this connection Article 12 of the treaty of 1785 provides that in the event of a war between one of the contracting parties with another power the free commerce and intercourse of the nationals of the party remaining neutral with the belligerent powers shall not be interrupted, but that on the contrary the vessel of the neutral party may navigate freely to and from the ports of the belligerent powers, even neutralizing enemy goods on board thereof. However, this article merely formulates general rules for the freedom of maritime intercourse and leaves the question of contraband untouched; the specific stipulations on this point are contained in the following article, which is materially identical with Article 13 of the treaty of 1799 now in force.

The plain intention of Article 13 is to establish a reasonable compromise between the military interests of the belligerent contracting party and the commercial interests of the neutral party. On the one hand the belligerent party is to have the right to prevent the transportation of war supplies to his adversaries even when carried on vessels of the neutral party; on the other hand the commerce and navigation of the neutral party is to be interfered with as little as possible by the measures necessary for such prevention, and reasonable compensation is to be paid for any inconvenience or damage which may nevertheless ensue from the proceeding of the belligerent party.

Article 13 recites the following means whereby the belligerent party can prevent the vessels of the neutral party from carrying war sup-

plies to his adversary. The detention of the ship and cargo for such length of time as the belligerent may think necessary; furthermore the taking over of the war stores for his own use, paying the full value of the same as ascertained at the place of destination. The right of sinking is not mentioned in the treaty and is therefore neither expressly permitted nor expressly prohibited, so that on this point the party stipulations must be supplemented by the general rules of international law. From the meaning and spirit of the treaty it really appears out of the question that it was intended to expect of the belligerent that he should permit a vessel loaded with contraband, for example a shipment of arms and ammunition of decisive importance for the outcome of the war, to proceed unhindered to his enemy when circumstances forbid the carrying of the vessel into port, if the general rules of international law allow sinking of the vessel.

The remaining stipulations of Article 13 must likewise be considered in this light; they provide that the captain of a vessel stopped shall be allowed to proceed on his voyage if he delivers out the contraband to the war-ship which stopped his vessel. For such delivering out can not of course be considered when the ensuing loss of time imperils either the war-ship herself or the success of her other operations. In the case of the *William P. Frye* the German commander at first tried to have matters settled by the delivery of contraband, but convinced himself of the impracticability of this attempt in that it would expose his ship to attack by whatever superior force of enemy war vessels pursuing him and was accordingly obliged to determine upon the sinking of the *Frye*. Thus he did not exceed on this point the limits to which he was bound by Article 13.

However, Article 13 asserts itself here to the extent that it founds the obligation to compensate the American citizens affected, whereas according to the general rules of international law the belligerent party does not need to grant compensation for a vessel lawfully sunk. For if, by Article 13, the mere exercise of right of highways makes the belligerent liable for compensation, this must apply *a fortiori* to the exercise of the right of sinking.

The question whether the German commander acted legally was primarily a subject for the consideration of the German prize courts according to general principles of international law as laid down; also in Article 1 of The Hague Convention for the establishment of an international prize court and in Article 51 of the Declaration of London. The German Government consequently laid the case of *William P. Frye* before the competent prize court at Hamburg, as was stated in its note of the 7th ultimo. This court found by its judgment of the 10th instant that the cargo of the American vessel *William P. Frye* was contraband, that the vessel could not be carried into port, and that the sinking was therefore justified; at the same time the court expressly recognized the validity of the Prussian-American

treaty stipulations severally mentioned for the relations between the German Empire and America, so that the sinking of the ship and cargo, so far as American property, makes the German Empire liable for indemnity. The prize court was unable to fix the indemnity itself, since it had no data before it, failing the receipt of the necessary detail from the parties interested.

It will now be necessary to settle these points in a different way. The German Government suggests as the simplest way that each of the two Governments designate an expert, and that the two experts jointly fix the amount of indemnity for the vessel and any American property which may have been sunk with her. The German Government will promptly pay the amount of indemnity thus ascertained; it expressly declares, however, reverting to what has been stated above, that this payment does not constitute satisfaction for the violation of American treaty rights, but a duty or policy of this Government founded on the existing treaty stipulations.

Should the American Government not agree to this manner of settling the matter, the German Government is prepared to submit the difference of opinion as being a question of the interpretation of the existing treaties between Germany and the United States to the tribunal at The Hague, pursuant to Article 38 of The Hague Convention for the pacific settlement of international disputes.

The undersigned begs to suggest that the Ambassador bring the above to the attention of his Government and avails himself, etc.,

VON JAGOW.

GERARD.

The Secretary of State to Ambassador Gerard

[Telegram]

No. 2057.]

DEPARTMENT OF STATE,

Washington, August 10, 1915.

You are instructed to present the following note to the German Minister for Foreign Affairs:

Under instructions from my Government, I have the honor to inform Your Excellency in reply to your note of July 30 in regard to the claim for reparation for the sinking of the *William P. Fryc*, that the Government of the United States learns with regret that the objections urged by it against the submission of this case to the prize court for decision have not commended themselves to the Imperial German Government, and it equally regrets that the reasons presented by the Imperial German Government for submitting this case to the prize court have failed to remove the objections of the Government of the

United States to the adoption of that course. As this disagreement has been reached after the full presentation of the views of both Governments in our previous correspondence, a further exchange of views on the questions in dispute would doubtless be unprofitable, and the Government of the United States therefore welcomes Your Excellency's suggestion that some other way should be found for settling this case.

The two methods of settlement proposed as alternative suggestions in Your Excellency's note have been given careful consideration, and it is believed that if they can be combined so that they may both be adopted, they will furnish a satisfactory basis for the solution of the questions at issue.

The Government of the United States has already expressed its desire that the question of the amount of indemnity to be paid by the Imperial German Government under its admitted liability for the losses of the owners and captain on account of the destruction of the *Frye* should be settled by diplomatic negotiation, and it entirely concurs with the suggestion of the Imperial German Government that the simplest way would be to agree, as proposed in your note, "that each of the two Governments designate an expert and that the two experts jointly fix the amount of indemnity for the vessel and any American property which may have been sunk with her," to be paid by the Imperial German Government when ascertained as stated in your note. It is assumed that the arrangement will include some provision for calling in an umpire in case the experts fail to agree.

The Government of the United States notes that your suggestion is made with the express reservation that a payment under this arrangement would not constitute an admission that American treaty rights had been violated, but would be regarded by the Imperial German Government merely as fulfilling a duty or policy founded on existing treaty stipulations. A payment made on this understanding would be entirely acceptable to the Government of the United States, provided that the acceptance of such payment should likewise be understood to be without prejudice to the contention of the Government of the United States that the sinking of the *Frye* was without legal justification, and provided also that an arrangement can be agreed upon for the immediate submission to arbitration of the question of legal justification, in so far as it involves the interpretation of existing treaty stipulations.

There can be no difference of opinion between the two Governments as to the desirability of having this question of the true intent and meaning of their treaty stipulations determined without delay, and to that end the Government of the United States proposes that the alternative suggestion of the Imperial German Government also be adopted, so that this question of treaty interpretation can be submitted forth-

with to arbitration pursuant to Article 38 of The Hague Convention for the pacific settlement of international disputes.

In this way both the question of indemnity and the question of treaty interpretation can promptly be settled, and it will be observed that the only change made in the plan proposed by the Imperial German Government is that instead of eliminating either one of its alternative suggestions, they are both given effect in order that both of the questions under discussion may be dealt with at the same time.

If this proposal proves acceptable to the Imperial German Government, it will be necessary also to determine whether, pending the arbitral award, the Imperial German Government shall govern its naval operations in accordance with its own interpretation, or in accordance with the interpretation maintained by the United States, as to the obligations imposed by their treaty stipulations, and the Government of the United States would be glad to have an expression of the views of the Imperial German Government on this point.

LANSING.

Ambassador Gerard to the Secretary of State

[Telegram]

AMERICAN EMBASSY,
Berlin, September 20, 1915.

Following note received from the Foreign Office to-day:

FOREIGN OFFICE,
Berlin, September 19, 1915.

The undersigned has the honor to make the following reply to the note of His Excellency, Mr. James W. Gerard, Ambassador of the United States of America, dated 13th ultimo, on the subject of the claim for reparation for the sinking of the American merchantman *William P. Frye*.

With regard first to the ascertainment of the damages by experts the German Government believes that it should dispense with the nomination of an umpire. In the cases of the ascertainment of damages hitherto arranged between the German Government and a neutral Government from similar causes the experts named by the two parties have always reached an agreement as to the amount of the damage without difficulty; should it not be possible, however, to reach an agreement on some point, it could probably be settled by diplomatic negotiation. Assuming that the American Government agrees to this, the German Government names as its expert Dr. Kepny, of Bremen, director of the North German Lloyds; it begs to await the designation of the American expert.

The German Government declares that it agrees to the proposal of the American Government to separate the question of indemnity from the question of the interpretation of the Prussian-American treaties of 1785, 1799, and 1828. It therefore again expressly states that in making payment it does not acknowledge the violation of the treaty as contended by the American side, but it will admit that the settlement of the question of indemnity does not prejudice the arrangement of the difference of opinion concerning the interpretation of the treaty rights, and that this dispute is left to be decided by The Hague tribunal of arbitration.

The negotiations relative to the signing of the *compromis* provided by Article 52 of The Hague Arbitration Convention would best be conducted between the Foreign Office and the American Embassy in Berlin in view of the difficulties in the way of instructing the Imperial Ambassador at Washington. In case the American Government agrees, the Foreign Office is prepared to submit to the Embassy a draft of such a *compromis*.

The American Government's inquiry whether the German Government will govern its naval operations in accordance with the German or American interpretation of the treaty stipulations in question pending the arbitral proceedings has been carefully considered by German Government. From the standpoint of law and equity it is not prevented in its opinion from proceeding against American ships carrying contraband according to its interpretation until the question is settled by arbitration. For the German Government does not need to depart from the application of generally recognized rules of the law of maritime war, as the Declaration of London, unless and in so far as an exception based on a treaty, is established beyond all doubt; in the case of the present difference of opinion between the German and the American Governments such an exception could not be taken to be established except on the ground of the arbitral award. Moreover, the disadvantages to Germany which would ensue from the American interpretation of the treaty stipulations would be so much greater as to be out of proportion to those which the German interpretation would entail for the United States. For whereas the American interpretation would materially impede Germany in her conduct of warfare, hardly any particular disadvantage to American citizens would result from the German interpretation, since they receive full reparation for any property damage sustained.

Nevertheless the German Government, in order to furnish to the American Government evidence of its conciliatory attitude, has issued orders to the German naval forces not to destroy American merchantmen which have loaded conditional contraband, even when the conditions of international law are present, but to permit them to continue their voyage unhindered if it is not possible to take them into port. On the other hand, it must reserve to itself the right to destroy vessels

carrying absolute contraband wherever such destruction is permissible according to the provisions of the Declaration of London.

The undersigned begs to suggest that the Ambassador bring the above to the knowledge of his Government, and avails himself of the opportunity to renew, etc.

VON JAGOW.

GERARD.

The Secretary of State to Ambassador Gerard

[Telegram]

DEPARTMENT OF STATE,

Washington, October 12, 1915.

You are instructed to present the following note to the German Minister of Foreign Affairs:

In reply to Your Excellency's note of September 19, on the subject of the claim for damages for the sinking of the American merchantman *William P. Frye*, I am instructed by the Government of the United States to say that it notes with satisfaction the willingness of the Imperial German Government to settle the questions at issue in this case by referring to a joint commission of experts the amount of the indemnity to be paid by the Imperial German Government under its admitted liability for the losses of the owners and captain on account of the destruction of the vessel, and by referring to arbitration the question of the interpretation of treaty rights. The Government of the United States further notes that in agreeing to this arrangement the Imperial German Government expressly states that in making payment it does not acknowledge the violation of the treaty as contended by the Government of the United States, and that the settlement of the question of indemnity does not prejudice the arrangement of the differences of opinion between the two governments concerning the interpretation of the treaty rights. The Government of the United States understands that this arrangement will also be without prejudice to its own contention in accordance with the statement of its position in its note of August 10 last to Your Excellency on this subject, and the Government of the United States agrees to this arrangement on that understanding. Your Excellency states that the Imperial German Government believes that the nomination of an umpire should be dispensed with, because it has been the experience of the Imperial German Government that the experts named in such cases have always reached an agreement without difficulty, and that should they disagree on some point, it could probably be settled by diplomatic negotiation. The

Government of the United States entirely concurs in the view that it is not necessary to nominate an umpire in advance. It is not to be assumed that the experts will be unable to agree, or that if they are, the point in dispute can not be settled by diplomatic negotiation, but the Government of the United States believes that in agreeing to this arrangement it should be understood in advance that in case the amount of indemnity is not settled by the joint commission of experts or by diplomatic negotiation, the question will then be referred to an umpire if that is desired by the Government of the United States.

Assuming that this understanding is acceptable to the German Government, it will only remain for the Government of the United States to nominate its expert to act with the expert already nominated by the German Government on the joint commission. It seems desirable to the Government of the United States that this joint commission of experts should meet without delay as soon as the American member is named and that its meetings should be held in the United States, because, as pointed out in my note to you of April 30 last, any evidence which the German Government may wish to have produced is more acceptable and can more conveniently be examined there than elsewhere.

With reference to the agreement to submit to arbitration the question of treaty interpretation, the Government of the United States notes that in answer to its inquiry whether, pending the arbitral proceedings, the German Government will govern its naval operations in accordance with the German or American interpretation of the treaty stipulations in question, the reply of the German Government is that it "has issued orders to the German naval forces not to destroy American merchantmen which have loaded conditional contraband even when the conditions of international law are present, but to permit them to continue their voyage unhindered if it is not possible to take them into port," and that "on the other hand it must reserve to itself the right to destroy vessels carrying absolute contraband whenever such destruction is permissible according to the provisions of the Declaration of London."

Without admitting that the Declaration of London is in force, and on the understanding that the requirement in Article 50 of the Declaration that "before the vessel is destroyed all persons on board must be placed in safety" is not satisfied by merely giving them an opportunity to escape in lifeboats, the Government of the United States is willing, pending the arbitral award in this case, to accept the Declaration of London as the rule governing the conduct of the German Government in relation to the treatment of American vessels carrying cargoes of absolute contraband. On this understanding the Government of the United States agrees to refer to arbitration this question of treaty interpretation.

The Government of the United States concurs in the desire of the Imperial German Government that the negotiations relative to the signing of the compromise referring this question of treaty interpreta-

tion to arbitration under the provisions of Article 52 of The Hague Arbitration Convention, should be conducted between the German Foreign Office and the American Embassy in Berlin, and the Government of the United States will be glad to receive the draft compromise, which you inform me the Foreign Office is prepared to submit to the American Ambassador in Berlin. Anticipating that it may be convenient for the Imperial German Government to know in advance of these negotiations the preference of the Government of the United States as to the form of arbitration to be arranged for in the compromise, my Government desires me to say that it would prefer, if agreeable to the Imperial Government, that the arbitration should be by summary procedure, based upon the provisions of Articles 86 to 90, inclusive, of The Hague Arbitration Convention, rather than the longer form of arbitration before the Permanent Court at The Hague.

Arrange for simultaneous publication of this note at earliest date which will give you time to notify the Department.

LANSING.

Ambassador Gerard to the Secretary of State

No. 1964.]

AMERICAN EMBASSY,
Berlin, December 2, 1915.

SIR: With reference to my telegram of even date¹ and to previous correspondence on the subject of the claim for damages for the sinking of the American merchantman *William P. Frye*, I have the honor to transmit to you herewith a copy and translation of a note received from the Imperial Foreign Office, dated November 29, 1915, which replies to a note which I addressed to the Imperial Foreign Office on October 14, 1915, pursuant to the instructions contained in your telegram No. 2291, of October 12, 1915.

A copy and translation of the draft of a *compromis* submitted by the Imperial German Government is likewise transmitted herewith.

I have, etc.,

GERARD.

[Inclosure—Translation]

The German Minister for Foreign Affairs to Ambassador Gerard

BERLIN, November 29, 1915.

The undersigned has the honor to inform His Excellency, Mr. James W. Gerard, Ambassador of the United States of America, in reply to

¹Not printed.

the note of October 14, F. O. No. 5671, relative to indemnity for the sinking of the American merchant vessel *William P. Frye*, as well as to the settlement by arbitration of the difference of opinion which has arisen on this occasion, as follows:

With regard first to the ascertainment of indemnity for the vessel sunk, the German Government is in agreement with the American Government in principle that the amount of damages be fixed by two experts, one each to be nominated by the German and the American Governments. The German Government regrets that it can not comply with the wish of the American Government to have the experts meet in Washington, since the expert nominated by it, Dr. Greve, of Bremen, director of the North German Lloyd, is unable to get away from here, and furthermore would be exposed to the danger of capture during a voyage to America in consequence of the conduct of maritime war by England contrary to international law. Should the American expert likewise be unable to get away, the two experts might perhaps get in touch with each other by correspondence.

The German Government likewise regrets that it can not assent at this time to the nomination of an umpire as desired by the American Government, for apart from the fact that in all probability the experts will reach an agreement in the case of the *William P. Frye* with the same facility as was the case with similar negotiations with other neutral Governments, the assent of the German Government to the consultation of an umpire would depend materially upon whether the differences of opinion between the two experts pertained to questions of principle or merely to the appraisal of certain articles. The consultation of an umpire could only be considered at all in the case of appraisements of this nature.

Should the American Government insist on its demands for the meeting of the experts at Washington or the early choice of an umpire, the only alternative would be to arrange the fixing of damages by diplomatic negotiation. In such an event the German Government begs to await the transmission of a statement of particulars of the various claims for damages accompanied by the necessary proofs.

With regard to the arbitral treatment of the difference of opinion relative to the interpretation of certain stipulations of the Prussian-American commercial treaties, the German Government has drawn up the inclosed draft of a *compromis*, which would have to be worded in the German and English languages and drawn up with due consideration of the two alternating texts. It is true that the draft does not accommodate the suggestions of the American Government so far as it is not in accordance with the rules of summary procedure provided by chapter 4 of The Hague Arbitration Convention, but with the rules of regular procedure. The summary procedure is naturally intended only for differences of opinion of inferior importance, whereas the German Government attaches very particular importance to the interpretation of the Prussian-American treaties which have existed

for over 100 years. Pursuant to the agreement made, any proposed amendments would have to be discussed between the Foreign Office and the American Embassy, and oral discussions would appear to be advisable.

Until the decision of the permanent court of arbitration, the German naval forces will sink only such American vessels as are loaded with absolute contraband, when the preconditions provided by the Declaration of London are present. In this the German Government quite shares the view of the American Government that all possible care must be taken for the security of the crew and passengers of a vessel to be sunk. Consequently, the persons found on board of a vessel may not be ordered into her lifeboats except when the general conditions, that is to say, the weather, the condition of the sea, and the neighborhood of the coasts afford absolute certainty that the boats will reach the nearest port. For the rest the German Government begs to point out that in cases where German naval forces have sunk neutral vessels for carrying contraband, no loss of life has yet occurred.

The undersigned begs to give expression to the hope that it will be possible for the two Governments to reach a complete understanding regarding the case of the *William P. Frye* on the above basis, and avails himself of this opportunity to renew to His Excellency, the Ambassador, the assurance of his highest consideration.

VON JAGOW.

[Translation]

ARBITRATION COMPROMIS

The Imperial German Government and the Government of the United States of America having reached an agreement to submit to a court of arbitration the difference of opinion which has arisen, occasioned by the sinking of the American merchant vessel *William P. Frye* by a German war-ship, in respect of the interpretation of certain stipulations of the Prussian-American treaties of amity and commerce, the undersigned, duly authorized for this purpose, have agreed to the following *compromis*:

ARTICLE I

A court of arbitration composed in accordance with the following stipulations is charged with the decision of the legal question:

Whether according to the treaties existing between the parties, in particular Article XIII of the Prussian-American treaty of amity and commerce of July 11, 1799, the belligerent contracting party is prevented from sinking merchant vessels of the neutral contracting party for carrying contraband when such sinking is permissible according to general principles of international law.

ARTICLE II

The court of arbitration shall be composed of five arbitrators to be chosen among the members of the permanent tribunal of arbitration at The Hague.

Each government will choose two arbitrators, of whom only one may be a national of such country, as soon as possible, at the latest within two weeks from the day this *compromis* is signed. The four arbitrators thus nominated shall choose an umpire within four weeks after they have been notified of their nomination; in case of an equal vote the president of the Swiss federal council shall be requested to select the umpire.

ARTICLE III

On March 1, 1916, each party shall transmit to the bureau of the permanent tribunal of arbitration 18 copies of its argument with authenticated copies of all documents and correspondence on which it intends to rely in the case. The bureau will arrange without delay for the transmission to the arbitrators and to the parties, each arbitrator to receive two copies, each party three copies. Two copies shall remain in the archives of the bureau.

On May 1, 1916, the parties shall deposit their countercases with the supporting evidence and their statements in conclusion.

ARTICLE IV

Each party shall deposit with the international bureau at the latest on March 1, 1916, the sum of 3,000 gulden of The Netherlands toward the costs of the arbitral procedure.

ARTICLE V

The court of arbitration shall meet at The Hague on June 15, 1916, and proceed immediately to examine the dispute.

ARTICLE VI

The parties may make use of the German or the English language. The members of the court may use the German or the English language as they may choose. The decisions of the court shall be written in both languages.

ARTICLE VII

Each party shall be represented by a special agent whose duty shall be to act as an intermediary between the party and the court. These agents shall furnish the court any explanations which the court may

demand of them; they may submit any legal arguments which they may consider advisable for the defense of their case.

ARTICLE VIII

The stipulations of the convention of October 18, 1907, for the pacific settlement of international disputes, shall be applied to this arbitral procedure, in so far as nothing to the contrary is provided by the above *compromis*.

Done in duplicate at Berlin on the — day of —

Supplement to Pamphlet No. 26¹

*The Minister of Switzerland in Charge of German Interests in America
to the Secretary of State*

LEGATION OF SWITZERLAND,
Washington, February 10, 1917.

MR. SECRETARY OF STATE: The German Legation at Berne has communicated the following to the Swiss Political Department (Foreign Office) :

The American treaty of friendship and commerce of the eleventh of July, 1799, provides by Article 23 for the treatment of the subjects or citizens of the two States and their property in the event of war between the two States. This Article, which is without question in full force as regards the relations between the German Empire and the United States, requires certain explanations and additions on account of the development of international law. The German Government therefore proposes that a special arrangement be now signed, of which the English text is as follows:

Agreement between Germany and the United States of America concerning the treatment of each others citizens and their private property after the severance of diplomatic relations.

Article 1). After the severance of diplomatic relations between Germany and the United States of America and in the event of the outbreak of war between the two powers, the citizens of either party and their private property in the territory of the other party shall be treated according to article 23 of the treaty of amity and commerce between Prussia and the United States, of the 11th of July, 1799, with the following explanatory and supplementary clauses:

Article 2). German merchants in the United States and American merchants in Germany shall, so far as the treatment of their persons and their property is concerned, be held in every respect on a par with the other persons mentioned in article 23. They shall accordingly, even after the period provided for in article 23 has elapsed, be entitled to remain and continue their profession in the country of their residence. Merchants as well as the other persons mentioned in article 23 may be excluded from fortified places or other places of military importance.

¹Official Prints of the Department of State.

Article 3). Germans in the United States and Americans in Germany shall be free to leave the country of their residence within the time and by the routes that shall be assured to them by the proper authorities. The persons departing shall be entitled to take along their personal property, including money, valuables, and bank accounts, excepting such property the exportation of which is prohibited according to general provisions.

Article 4). The protection of Germans in the United States and of Americans in Germany and of their property shall be guaranteed in accordance with the laws existing in the countries of either party. They shall be under no other restrictions concerning the enjoyment of their private rights and the judicial enforcement of their rights than neutral residents. They may accordingly not be transferred to concentration camps, nor shall their private property be subject to sequestration or liquidation or other compulsory alienation except in case that under the existing laws apply also to neutrals. As a general rule German property in the United States and American property in Germany shall not be subject to sequestration or liquidation, or other compulsory alienation under other conditions than neutral property.

Article 5). Patent rights or other protected rights held by Germans in the United States or Americans in Germany shall not be declared void, nor shall the exercise of such rights be impeded, nor shall such rights be transferred to others without the consent of the person entitled thereto, provided that regulations made exclusively in the interest of the State shall apply.

Article 6). Contracts made between Germans and Americans, either before or after the severance of diplomatic relations, also obligations of all kinds between Germans and Americans, shall not be declared cancelled, void, or in suspension, except under provisions applicable to neutrals. Likewise the citizens of either party shall not be impeded in fulfilling their liabilities arising from such obligations, either by injunctions or by other provisions, unless these apply to neutrals.

Article 7). The provisions of the sixth Hague Convention, relative to the treatment of enemy merchant ships at the outbreak of hostilities, shall apply to the merchant vessels of either party and their cargo. The aforesaid ships may not be forced to leave port unless at the same time they be given a pass, recognized as binding by all the enemy sea powers, to a home port, or a port of an allied country, or to another port of the country in which the ship happens to be.

Article 8). The regulations of chapter 3 of the eleventh Hague Convention, relative to certain restrictions in the exercise of the right of capture in maritime war, shall apply to the captains, officers, and members of the crews of merchant ships specified in article 7, and of such merchant ships as may be captured in the course of a possible war.

Article 9). This agreement shall apply also to the colonies and other foreign possessions of either party.

I am instructed and have the honor to bring the foregoing to your Excellency's knowledge and to add that the German Government would consider the arrangement as concluded and act accordingly as soon as the consent of the American Government shall have been communicated to it through the Swiss Government.

Be pleased, etc.,

P. RITTER.

The Secretary of State to the Minister of Switzerland in Charge of German Interests in America

No. 416.]

DEPARTMENT OF STATE,

Washington, March 20, 1917.

SIR: I beg to acknowledge the receipt of your note of February 10th presenting the proposals of the German Government for an interpretative and supplementary agreement as to Article 23 of the Treaty of 1799. After due consideration, I have to inform you that the Government of the United States is not disposed to look with favor upon the proposed agreement to alter or supplement the meaning of Article 23 of this Treaty. This position of the Government of the United States, which might under other conditions be different, is due to the repeated violations by Germany of the Treaty of 1828 and the Articles of the Treaties of 1785 and 1799 revived by the Treaty of 1828. It is not necessary to narrate in detail these violations, for the attention of the German Government has been called to the circumstances of each instance of violation, but I may here refer to certain of them briefly and in general terms.

Since the sinking of the American steamer *William P. Frye* for the carriage of contraband, there have been perpetrated by the German naval forces similar unwarranted attacks upon and destruction of numerous American vessels for the reason, as alleged, that they were engaged in transportation of articles of contraband, notwithstanding, and in disregard of, Article 13 of the Treaty of 1799, that "No such articles (of contraband) carried in the vessels or by the subjects or citizens of either party to the enemies of the other shall be deemed contraband so as to induce confiscation or condemnation and a loss of property to individuals," and that "In the case * * * of a vessel stopped for articles of contraband, if the master of the vessel stopped

will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port or further detained, but shall be allowed to proceed on her voyage."

In addition to the sinking of American vessels, foreign merchant vessels carrying American citizens and American property have been sunk by German submarines without warning and without any adequate security for the safety of the persons on board or compensation for the destruction of the property by such action, notwithstanding the solemn engagement of Article 15 of the Treaty of 1799 that "All persons belonging to any vessel of war, public or private, who shall molest or insult in any manner whatever the people, vessels or effects of the other party, shall be responsible in their persons and property for damages and interest, sufficient security for which shall be given by all commanders of private armed vessels before they are commissioned," and notwithstanding the further stipulation of Article 12 of the Treaty of 1785 that "The free intercourse and commerce of the subjects or citizens of the party remaining neutral with the belligerent powers shall not be interrupted." Disregarding these obligations, the German Government has proclaimed certain zones of the high seas in which it declared without reservation that all ships, including those of neutrals, will be sunk, and in those zones German submarines have, in fact, in accordance with this declaration, ruthlessly sunk merchant vessels and jeopardized or destroyed the lives of American citizens on board.

Moreover, since the severance of relations between the United States and Germany, certain American citizens in Germany have been prevented from removing freely from the country. While this is not a violation of the terms of the treaties mentioned, it is a disregard of the reciprocal liberty of intercourse between the two countries in time of peace, and can not be taken otherwise than as an indication of a purpose on the part of the German Government to disregard in the event of war the similar liberty of action provided for in Article 23 of the Treaty of 1799—the very article which it is now proposed to interpret and supplement almost wholly in the interest of the large number of German subjects residing in the United States and enjoying in their persons or property the protection of the United States Government. This article provides in effect that merchants of either country residing in the other shall be allowed a stated time in which to remain to settle their affairs and to "depart freely, carrying off all of their effects with-

out molestation or hindrance," and women and children, artisans and certain others, may continue their respective employments and shall not be molested in their persons or property. It is now proposed by the Imperial German Government to enlarge the scope of this article so as to grant to German subjects and German property remaining in the United States in time of war the same treatment in many respects as that enjoyed by neutral subjects and neutral property in the United States.

In view of the clear violations by the German authorities of the plain terms of the treaties in question, solemnly concluded on the mutual understanding that the obligations thereunder would be faithfully kept, in view further of the disregard of the canons of international courtesy and the comity of nations in the treatment of innocent American citizens in Germany, the Government of the United States can not perceive any advantage which would flow from further engagements, even though they were merely declaratory of international law, entered into with the Imperial German Government in regard to the meaning of any of the articles of these treaties, or as supplementary to them. In these circumstances, therefore, the Government of the United States declines to enter into the special protocol proposed by the Imperial Government.

I feel constrained in view of the circumstances to add that this Government is seriously considering whether or not the Treaty of 1828 and the revived articles of the treaties of 1785 and 1799 have not been in effect abrogated by the German Government's flagrant violations of their provisions, for it would be manifestly unjust and inequitable to require one party to an agreement to observe its stipulations and to permit the other party to disregard them. It would appear that the mutuality of the undertaking has been destroyed by the conduct of the German authorities.

Accept, etc.,

ROBERT LANSING.

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Carnegie Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

Pamphlet No. 27

OFFICIAL DOCUMENTS BEARING ON THE ARMED NEUTRALITY OF 1780 AND 1800

**PUBLISHED BY THE ENDOWMENT
WASHINGTON, D. C.**

1917

**OFFICIAL DOCUMENTS BEARING ON THE ARMED NEUTRALITY
OF 1780 AND 1800**

Introduction¹

In the meantime Spain had been drawn into the war as an ally of France under the family compact of 1761, and Great Britain had demanded in vain from Holland that assistance which the republic was bound to render by the subsisting treaties of alliance and guarantee between the two countries. Indeed appearances indicated that Great Britain was soon to encounter an enemy in her ancient ally. Her naval, commercial, and colonial superiority were thus threatened by a formidable confederacy of the maritime Powers of Europe combined with the youthful energies of her own revolted colonies. In this extremity, the British Cabinet turned its attention to Russia, as a Power whose friendship and aid might be secured by the application of suitable means. Sir James Harris (afterwards Lord Malmsbury) was instructed to sound the disposition of the Empress Catharine, and for this purpose addressed himself to Panin, Chancellor of the Empire, and Potemkin, the reigning favorite of that princess. The former was unfavorable to the views of the British Cabinet; but the latter opened to their Ambassador the means of secret conference with the Empress, who consented to offer her armed mediation in the war between Great Britain on the one side, and France, Spain, and the United States on the other, as an equivalent for Russia's being allowed to prosecute her designs on the Turkish Empire. But the inclinations of the Empress were still resisted by Panin, who endeavored to convince her that the true interests of the Russian State would not be promoted by such an alliance; and an official answer was accordingly returned declining the British overtures. Harris was disconcerted by this unexpected result, but received assurances from Potemkin, in the name of the Empress, of unchanged good-will, and an expression of the hope that circumstances would soon enable her to conform her conduct to her wishes.

An incident now occurred which seemed to favor the designs of the British negotiator. Two Russian vessels laden with corn, and

¹From Henry Wheaton's *History of the Law of Nations in Europe and America from the Earliest Times to the Treaty of Washington, 1842*, (New York, 1845), pp. 295-304 and 397-421.

bound to the Mediterranean, were seized by Spanish cruisers upon the ground that they were intended to supply the fortress of Gibraltar. The Empress instantly demanded satisfaction from the Spanish Court, and was persuaded by Potemkin to order, without consulting Panin, the equipment of a fleet at Kronstadt, which was destined to cooperate with Great Britain against Spain and her allies, in case redress should be refused. The fitting out of the fleet could not long be concealed from Panin, nor did he doubt its destination. But he determined to carry into effect his own views by appearing to forward those of his rival. Far from appearing to oppose the designs of the Empress, he declared that he himself participated in her indignation at the conduct of Spain, and entirely approved of her determination to require satisfaction for the injury done to the neutral navigation of her subjects engaged in a lawful commerce. He would even go further; he would exhort his sovereign to seize this opportunity of solemnly announcing to Europe that she would not suffer the wars waged by other Powers to affect injuriously the accustomed trade of Russia. He represented that such a course would secure the friendship and cooperation of all the neutral Powers, and would compel Spain to grant complete satisfaction for the injury she had committed. The true principles of neutrality, sanctioned by the natural law of nations, had been hitherto too little respected in practice. They had hitherto wanted the support of a sovereign uniting sufficient power, wisdom, and benevolence to cause them to be respected. These requisites were now united in Catharine, and she had an opportunity of acquiring new titles to glory, of becoming a lawgiver to the high seas, of restraining the excesses of maritime warfare, and affording to the peaceful commerce of neutrals such a security as it never had possessed.

The Empress was completely carried away by these representations so flattering to her pride and ambition. She ordered Panin to prepare a statement of the principles he had developed, to be communicated to the belligerent Powers, as the rules to be observed for the security of Russian navigation and commerce, and to neutral States, as the basis of a league to be formed between them for the protection of neutral rights.¹

¹Von Dohm, *Denkwürdigkeiten meiner Zeit*, vol. ii, pp. 100-150; *Mémoire sur la Neutralité armée* par M. le Comte de Goertz, p. 104.

This account given by the Count de Goertz of the history of the armed neutrality is confirmed by what the Empress Maria Theresa said to Baron de Breteuil, Minister of France. "Il n'y a pas," lui-dit elle à l'occasion de la

In the declaration of the Empress of Russia, which was accordingly drawn up, under date of the 26th February, 1780, and communicated to the Courts of London, Versailles, and Madrid, these rules are laid down as follows:

1. That all neutral vessels may freely navigate from port to port and on the coasts of nations at war.

2. That the goods belonging to the subjects of the Powers at war shall be free in neutral vessels, except contraband articles.

3. That the Empress, as to the specification of the above-mentioned goods, holds to what is mentioned in the 10th and 11th articles of her treaty of commerce with Great Britain, extending these obligations to all the Powers at war.¹

4. That to determine what is meant by a blockaded port, this denomination is only to be given to that where there is, by the arrangements of the Power which attacks it with vessels, stationed sufficiently near, an evident danger in attempting to enter it.

Such was the origin of the first armed neutrality of 1780. It sprang from no enlarged and beneficent views of improvement in the maritime law of nations hitherto sanctioned by general practice. It was the accidental result of a mere court intrigue, and of the rivalry between two candidates for the favor of a dissolute, ambitious, and vain-glorious woman. Catharine herself had a very imperfect idea of the immense importance of the measure she had adopted and of the effects it might produce. So ignorant was she of commerce, that she flattered herself with having at once vindicated her own honor and shown her strong regard for Great Britain. Panin took care not to

neutralité armée; "il n'y a pas jusqu'à ses vues les plus mal combinées, qui ne tournent à son profit et à sa gloire; car vous savez sans doute que la déclaration, qu'elle vient de faire pour sa neutralité maritime, avait d'abord été arrêtée dans des termes et dans des vues absolument favorables à l'Angleterre. Cet ouvrage avait été fait par la seule influence de M. le Prince Potemkin, et à l'insu de M. le Comte de Panin; et cette déclaration, inspirée par l'Angleterre, était au moment de paraître, lorsque M. de Panin, qui en a été instruit, a trouvé moyen de la faire entièrement changer et de la tourner absolument en votre faveur." Flassan, *Histoire de la Diplomatie Française*, vol. vii, p. 272n.

¹The treaty of amity and commerce of 1766 between Great Britain and Russia, Article 10, restricts contraband to "munitions of war"; and the 11th article defines these to consist of "canons, mortiers, armes à feu, pistolets, grenades, boulets, balles, fusils, pierres-à-feu, mèches, poudre, salpêtre, soufre, cuirasses, piques, épées, ceinturons, poches à cartouche, selles et brides, au delà de la quantité qui peut être nécessaire pour l'usage du vaisseau," etc. Martens, *Recueil de Traités*, vol. 1, p. 395.

undeceive her and, fearing that his intrigue might fail, begged she would not communicate with any one until the couriers were sent off with the declaration. But she could not refrain from saying confidentially to the British Ambassador that there would soon be delivered in her name to all the belligerent Powers a manifesto which would be completely satisfactory to the British Government; and condescended even to give him leave to communicate thus much to his Court. The communication which he accordingly made raised its expectations to the highest pitch, and the disappointment was proportionably greater when it learnt the true nature of the measures adopted by the Russian Cabinet.

The British Government dissembled its resentment, and replied to the Russian declaration with cold dignity, that His Majesty had hitherto acted towards neutral Powers "conformably to the clearest principles generally acknowledged as the law of nations, being the only law between Powers where no treaties subsist, and agreeably to the tenor of his different engagements with other Powers, where those engagements have altered this primitive law by mutual stipulations proportioned to the will and convenience of the contracting Parties," and that "strongly attached to Her Majesty the Empress of all the Russias by the ties of reciprocal friendship and common interest, the King, from the commencement of those troubles, gave the most precise orders respecting the flag of Her Imperial Majesty and the commerce of her subjects, agreeably to the law of nations, and the tenor of the engagements stipulated by his treaty of commerce with her, and to which he shall adhere with the most scrupulous exactness.

The Court of Spain answered the Russian declaration by professing its determination to respect the neutral flag of all the Powers that had consented, or should consent to defend it, until His Catholic Majesty ascertained what part Great Britain should take, and whether its navy and privateers would keep within due bounds. And to show to all the neutral Powers how much Spain was desirous of observing, in time of war, the same rules of which she had claimed the observance whilst neutral, His Majesty conformed to those laid down by Russia, "with the understanding however that with regard to the blockade of Gibraltar, *the danger of entering* subsists as determined by the 4th article of the said declaration."

The Court of France answered, that the principles laid down by Russia were no other than the rules already prescribed to the French

navy, the execution of which was maintained with an exactness known and applauded by all Europe. "The freedom of neutral vessels, restrained in a few cases only, is a direct consequence of natural law, the security of nations, and the consolation even of those who are afflicted by the scourge of war. The King has therefore been desirous to procure, not only to the subjects of Her Majesty the Empress of Russia, but to all other States which continue neutral, the freedom of navigation on the same conditions with those announced in the declaration, to which His Majesty this day replies. The King believed that he had already advanced the general good, and prepared a glorious epoch of his reign, in establishing by his example those rights which every belligerent ought and must recognize as belonging to neutral vessels. This hope has not been vain, since the Empress, whilst engaging to observe the most exact neutrality, has declared in favor of that system which the King sustains at the price of the blood of his people, whilst she claims the same laws which His Majesty would make the basis of the universal maritime code."

Denmark and Sweden concurred in approving the principles of the Russian declaration, and notified their concurrence to the belligerent Powers.

Great Britain answered to the Danish notification, that during the whole course of the present war with France and Spain, she had constantly respected the rights of all friendly and neutral Powers, according to subsisting treaties, and according to the clearest and most generally recognized principles of the law of nations common to all nations who are bound by no special conventions. Such conventions existed between Great Britain and Denmark, and the Danish flag and commerce would continue to be respected according to their stipulations, which defined the mutual rights and duties of the two nations and which could not be changed without their mutual consent. Until thus changed, they constituted an inviolable law for both parties, which had been observed and would continue to be observed by the British Government with that spirit of equity which regulated all its conduct, and in the just expectation of reciprocal fidelity on the part of Denmark to its engagements.

To the notification of Sweden the British Cabinet answered in a similar manner, with a special reference to the stipulations of the existing treaties between the two countries, which were clear and formal, and could not be changed without the mutual consent of the contract-

ing Parties. As such, they would be observed by Great Britain, as a sacred and inviolable law.¹

Denmark and Russia concluded at Copenhagen on the 9th July, 1780, the convention of armed neutrality for the maintenance of those principles by the equipment of a joint fleet, and for their mutual defense against any Power who should attack either of the contracting Parties on account of their reciprocal engagements. By this convention, to which Sweden acceded on the 9th September, 1780, the Baltic sea was declared to be *mare clausum* against the ships of war of the belligerent Powers; and the contracting Parties referred to their respective treaties with the belligerent Powers for the definition of contraband.

In the meantime a diplomatic struggle was going on in the United Provinces between the agents of France and Great Britain, the former seeking to confirm the republic in her resolution of remaining neutral, and the latter insisting on her furnishing the succors stipulated by the existing treaties of alliance and guarantee. In order to determine the conduct of the Dutch, the French Government issued, on the 14th of January, 1779, an ordinance suspending the operation of the first article, that of the 26th July, 1778, in respect to their navigation, excepting that of Amsterdam. The operation of this ordinance was again suspended as respected the entire province of *Holland* on the 2d of July, 1779, which still continued to be privileged under the former ordinance of 1778. France thus sought to divide the councils of the republic, whilst the British Court notified the States-General that, if they did not, within the term of three weeks, furnish the stipulated succors, Great Britain would no longer consider their flag as privileged by treaty, but would conduct [itself], in respect to it, according to the strict principles of the preexisting law of nations. This menace was executed by the proclamation of the 17th April, 1780, which author-

¹"Le 12 article du traité de 1661 réglant la forme du certificat dont les vaisseaux doivent être munis, en donne cette raison :

Ne vero libera ejusmodi navigatio aut transitus foederati unius ejusque subditorum ac incolarum, durante bello alterius foederati, terra marive cum aliis gentibus fraudi sit alteri confoederato, mercesque et bona hostilia occultari possint.

"Le même article contient une stipulation précise et formelle. La voici : Si hostis bona in confoederati navigio reperiantur, quod ad hostem pertinet, praedae solum modo cedat, quod vero ad confoederatum illico restituitur.

"Le traité de 1666 prescrit le même certificat, et en donne les mêmes raisons." Martens, *Recueil de Traités*, vol. 3, p. 188.

ized the seizure of Dutch vessels, bound from one enemy's port to another, or laden with enemies' property. Whilst thus agitated by alternate hopes and fears, the States-General were invited by Russia to accede to the convention of armed neutrality which had been formed by the Baltic Powers. After long delays and hesitation, the resolution for this purpose was, at length, passed on the 20th November, 1780; but it was even then not unanimous, the three provinces of Zealand, Guelders, and Utrecht, having refused their assent. This was followed on the 20th December, 1780, by a declaration of war against the United Provinces on the part of Great Britain, grounded upon the alleged fact of their having concluded a secret treaty acknowledging the independence of the United States of America. The United Provinces demanded from the northern Powers the succors stipulated by the convention of armed neutrality; but this demand was rejected, upon the ground that the rupture between Great Britain and Holland, had actually taken place before the accession of the latter to the armed neutrality, and that the causes of war, stated in the British declaration, were entirely foreign to the objects of the neutral alliance.

The United States of America acceded to the principles of the armed neutrality by the ordinance of Congress of the 7th April, 1781.

Prussia acceded to the armed neutrality on the 8th May, 1781.

Austria acceded to the principles of the armed neutrality, but not to the conventions by which it was formed, on the 9th October, 1781.

Portugal acceded to the conventions on the 13th July, 1782.

The King of the Two Sicilies acceded to the conventions on the 10th February, 1783.

The armed neutrality of the northern Powers continued to hang as a dark cloud constantly menacing the safety of the British Empire until the peace of 1783. Being engaged in war with France, Spain, Holland, and the United States of America, the addition of the hostility of those Powers might have turned the already doubtful balance against her naval superiority. It was with this view, and also to detach Holland from the confederacy, that Great Britain offered, in 1782, to make a separate peace with the republic, under the mediation of Russia, on the basis of the treaty of 1674, by which, as Mr. Fox, then Secretary of State for Foreign Affairs, stated in his communication to the Russian Minister in London, "the principles of the armed neutrality are established in their widest extent to all the contracting

Parties. His Majesty, therefore, does not make any difficulty to say, that he will accept, as the basis of a separate peace between him and the States-General, a free navigation, according to the principles demanded by Her Imperial Majesty in her declaration of the 26th February, 1780."

This negotiation proved abortive, and Great Britain continued to act towards the Powers which remained neutral during the American war, according to the preexisting law of nations, as understood and practiced by her. She, however, asserted her maritime pretensions with much forbearance and caution, and suffered the rule she had established in the war of 1756, relating to the enemy's colonial trade, to slumber in oblivion.¹

Whilst this negotiation² was going on, the Emperor of Russia, who had separated himself, first from the alliance of Austria, and subsequently from that of Great Britain, proposed to the Courts of Denmark, Prussia, and Sweden, to conclude a convention for the revival of the principles of the armed neutrality of 1780. This proposition was grounded principally upon the necessity of concerting on the part of the northern Powers measures of defense against aggressions similar to that which it was alleged had been committed on the Danish frigate *Freya*; and the Emperor Paul no sooner heard of the arrival of a British fleet in the Sound, than he ordered a sequestration to be placed upon all British property in the Russian ports. The signature of the convention of the 29th August, between Denmark and Great Britain, induced him to retract this measure. But the refusal of the British Government to deliver to him the possession of the island of Malta, which he claimed under an alleged agreement with that Government, induced him to lay an embargo on all British vessels. Three treaties were signed at St. Petersburg on the 16th December, between Russia and Sweden and between Russia and Prussia, and on the 18th between Russia and Prussia; and as each of these Powers acceded to the treaties of the others with Russia, they formed together a sort of quadruple alliance.

¹Here follows a history of the period extending to the year 1800.

²i. e., the negotiation between Great Britain and Denmark terminated by the convention of Copenhagen of August 29, 1800, by which it was agreed that the Danish Government should suspend the granting of convoy until the question of right should be settled by a definitive convention.

By the first article of these treaties, the contracting Parties agreed to prohibit to their subjects all trade in contraband of war with any of the belligerent Powers.

The second article confined the list of contraband to military stores, as stipulated in the armed neutrality of 1780 by reference to the treaty of 1766 between Great Britain and Russia. But it was provided that this stipulation should be without prejudice to the particular stipulations in anterior treaties with the belligerent Parties, by which objects of a similar kind are reserved, prohibited, or permitted.

The third article provided, that the list of contraband articles, being thus determined and excluded from neutral commerce, the contracting Parties had resolved that all other trade should remain perfectly free. It was further declared, by the same article, that in order to provide a sufficient security for the general principles of natural law, of which the freedom of commerce and navigation and the rights of neutral nations are a direct consequence, they had determined no longer to suffer them to depend upon arbitrary interpretation suggested by isolated and temporary interests. With this view they had agreed:

1. That every vessel may navigate freely, from port to port, and on the coasts of nations at war.
2. That the goods belonging to the subjects of the Powers at war shall be free in neutral vessels, except contraband articles.
3. That to determine what is meant by a blockaded port, this denomination is only to be given to that where there is, by the arrangement of the Power which attacks it with vessels, stationed sufficiently near so that there is an evident danger in attempting to enter it; and that any vessel, sailing towards a blockaded port, should not be considered as contravening the convention, unless, after having been notified by the commander of the blockading force of the existence of the blockade, she should still endeavor to enter the blockaded port by means of force or fraud.
4. That neutral vessels shall only be detained for just cause and evident facts, that they shall be adjudged without delay, that the procedure shall be always uniform, prompt, and legal; and that in every case, besides the damages awarded to the injured parties, complete satisfaction shall be given for the insult to the national flag.
5. That the declaration of the officers, commanding the public ships which shall accompany the convoy of one or more merchant vessels, that the ships of his convoy have no contraband articles on board,

shall be deemed sufficient to prevent any search on board the convoying vessels or those under convoy.

The remaining articles provided for a joint armament to protect the neutral commerce of the subjects of the contracting Parties, and for an eventual alliance, in case either of them should be attacked on account of these engagements.

The Danish Government, at first, hesitated to ratify the treaty which had been signed by their Ministers at St. Petersburg. It was already bound by the convention of Copenhagen to Great Britain not to grant convoys to its merchant vessels until the question should be finally determined between the two Powers. An unconditional accession to the treaties of armed neutrality would seem to be a violation of its previous engagements with Great Britain. In the meantime, the British Minister at Copenhagen, by his note dated the 27th December, had demanded a clear, frank, and satisfactory answer upon the nature, objects, and extent of the obligations Denmark might have contracted, or the negotiations she was still pursuing with the other northern Powers. Count Bernstorff, in his reply to this note, of the 31st December, denied that the engagements his Government was upon the point of contracting were hostile to Great Britain, or inconsistent with the previous convention of the 29th August. He asserted, that a conditional and temporary suspension of the exercise of a right could not be considered as an abandonment of the right which was incontestable, and for the maintenance of which the northern Powers were about to provide by a mutual concert, which far from compromising their neutrality, was intended to confirm it.

The British Government replied to this note by an order in council, dated the 14th of January, 1801, laying an embargo on all Russian, Swedish, and Danish vessels. Lord Grenville notified this order to the Ministers of Denmark and Sweden, declaring that the new maritime code of 1780, now sought to be revived, was an innovation highly injurious to the dearest interests of Great Britain, and which Russia herself had renounced by the engagements contracted between her and Great Britain at the commencement of the then present war.

These measures decided Denmark to adhere unconditionally to the armed neutrality by a declaration published on the 27th February, 1801.

Great Britain continued to temporize, from motives of policy, with Prussia, the remaining party to the northern alliance. This did not

however prevent the Prussian Cabinet from cooperating with Denmark in shutting the mouths of the Elbe and the Weser, against British commerce. The Danish troops occupied Hamburg and Lubeck, whilst Hanover and Bremen were seized by Prussia. In the meantime, the war commenced between the Baltic Powers and Great Britain by the battle of Copenhagen, April 2, 1801, the result of which produced an armistice with Denmark. The death of the Emperor Paul dissolved the confederacy which had been formed under his auspices. The armistice with Denmark was extended to Russia and Sweden and the Hanseatic towns were evacuated by the Danish and Prussian troops. The embargoes were raised on both sides, and a negotiation opened at St. Petersburg for regulating the points in controversy.

This negotiation resulted in the signature of a convention between Great Britain and Russia on the 5th/17th of June, 1801, the preamble of which stated that:

[Here follows the text of the treaty.]

The Court of Copenhagen acceded to this convention, on the 23d October, 1801, and that of Sweden, on the 18/30th March, 1802. The list of contraband inserted in the convention differed from that contained in the 11th article of the treaty of 1661 between Great Britain and Sweden, whilst the convention reserved the special stipulations of the contracting Parties with other Powers relating to contraband. In order to prevent a recurrence of the differences which had arisen relative to the 11th article of the treaty of 1661, a convention was signed at London on the 25th July, 1803, between Great Britain and Sweden, by which the list of contraband contained in the convention of 1801 was augmented with the addition of the articles of coined money, horses, and the necessary equipments of cavalry, ships of war, and all manufactured articles serving immediately for their equipment, all which articles were subjected to confiscation. It was further stipulated, that all naval stores, the produce of either country, should be subject to the right of preemption by the belligerent, upon condition of paying an indemnity of ten per centum upon the invoice price, or current value, with demurrage and expenses. If bound to a neutral port, and detained upon suspicion of being bound to an enemy's port, the vessels were to receive an indemnity, unless the belligerent Government chose to exercise the right of preemption; in which case, the owners were to be entitled to receive the price

which the goods would have sold for at their destined port, with demurrage and expenses.¹

We have thought it necessary to dwell thus minutely upon the circumstances which attended the formation of the convention of 1801, because it may justly be considered, not merely as forming a new conventional law between the contracting Parties, but as containing a recognition of universal preexisting rights, which could not justly be withheld by them from other States. The avowed object of the treaty was to fix and declare the law of nations upon the several points which had been so much contested: the three northern Powers yielding the point of *free ships, free goods*, and that of search subject to a modification, by which the exercise of the right was confined to public ships of war; and Great Britain yielding to all of them those relating to the colonial and coasting trade, to blockades, and to the mode of search; and yielding to Russia, moreover, the limitation of contraband to military stores. With respect to the question of convoys, a question not comprehended in the armed neutrality of 1780, a modification, satisfactory to the northern Powers, was yielded by Great Britain.

That this is the true interpretation of the convention of 1801, was made evident in the course of the debate, which took place in the British House of Lords on the 12th of November, 1801, on the production of the papers relating to that convention.

On this occasion Lord Grenville, who, together with his friend Mr. Pitt, had retired from the Ministry, leaving their successors to make peace with France and the northern Powers, declared his full conviction that the convention essentially impaired the system of maritime law which had been upheld by the British Government. He stated that the inadmissible pretensions of the Baltic Powers had been countenanced by the weak and temporizing policy, which Great Britain had pursued towards them, in the last years of the war of the American revolution. At the commencement of the war of the French revolution, she had indeed obtained, by negotiation with all the principal Governments of Europe, a renunciation of claims, which had never been advanced but with purposes hostile to her. The principles in question were, indeed, within a few years after the armed neutrality of 1780, renounced by almost every State which had been a party

¹Schoell, *Histoire des Traités de Paix*, vol. vi, pp. 60-105; Martens, *Recueil de Traités*, vol. 7, pp. 150-281, vol. 8, p. 91.

to that league;¹ and in some of the official communications with the Baltic Powers, during the war with France, pretensions were advanced, both by the Empress Catharine and her successor, which went to the full extent of the ancient maritime law of Europe.² The effects of this change of sentiment ensured to Great Britain, for several years, the undisturbed exercise of her maritime rights in those quarters where they were the most important, both to her own interests, and to those of the common cause in which she was engaged. But when caprice and groundless disgust were suffered to interrupt this well-considered system of policy at Petersburg, the former pretensions of the neutral Powers were soon renewed with increased hostility; and it last became manifest, upon the signature of the convention of armed neutrality of 1800, that unless Great Britain could then resolve to meet the necessity of the case, by bringing these questions to a distinct and final settlement, they would always be found to impede her operations, and embarrass her exertions in every future period of difficulty or danger.

The principal objection stated by Lord Grenville to the convention of 1801 was, that in the form and wording of its different articles, the two hostile conventions of armed neutrality had been followed, with a scrupulous and servile exactness, wherever they could be made to apply. Great Britain had, therefore, negotiated and concluded that treaty on the basis of the very same inadmissible conventions, which she actually went to war for the purpose of annulling. And she then stood in the face of Europe, no longer as resisting, but as acceding to the treaties of armed neutrality, with modifications indeed, and changes in some important points, but sanctioning, by that concession, the general weight and authority of transactions which she had before considered as gross violations of public law, as manifest indications of hostile purpose, and as sufficient grounds to justify, on her part, the extremities of war itself. Whatever principles of maritime law might thereafter be contested, they must be discussed with some regard

¹By Russia, in her war with Turkey in 1787; by Sweden, in her war with Russia in 1789; by Russia, Prussia, Austria, Spain, Portugal and America, in their treaties with Great Britain during the first war of the French revolution; by Denmark and Sweden, in their instructions issued in 1793, when neutral; and in their treaty with each other in 1794; and by Prussia again in her treaty with America of 1799. (Note by Lord Grenville.)

²See Russian declaration to Sweden, July 30, 1793. Instructions to Admiral Tchatchagoff, July 24, 1793. See also Russian treaty of commerce 1797 with Great Britain, Article 10.

to the treaties of armed neutrality. Whatever words of doubtful interpretation were transferred from those treaties into the convention (and many such were transferred) must, according to one of the best rules of legitimate construction, be explained by a reference to the original instrument, where they were first introduced into the code of public law.

It was, therefore, under this impression that they must proceed to examine the convention of 1801, and to compare it with those claims, for which Great Britain determined, at the commencement of the year, that it was necessary, even under all the difficulties of that moment, to incur the additional dangers of a northern war. Those claims were included in five separate propositions or principles of maritime law, every one of which the neutral league of 1800, had bound the contracting parties in that engagement to resist by force: and every one of which their Lordships had agreed with the Ministry of that day, in considering as essentially necessary to be maintained for the preservation of the maritime strength of Great Britain, and, consequently for the means even of her domestic security.

The propositions were as follows:

1. That it is not lawful to neutral nations to carry on, in time of war, for the advantage, or on the behalf of one of the belligerent Powers, those branches of its commerce, from which they are excluded in time of peace.

2. That every belligerent Power may capture the property of its enemies, wherever it shall be met with on the high seas, and may, for that purpose, detain and bring into port neutral vessels laden wholly or in part with any such property.

3. That under the description of contraband of war, which neutrals are prohibited from carrying to the belligerent Powers, the law of nations (if not restrained by special treaty), includes all naval as well as all military stores; and generally all articles serving principally, according to the circumstances of the war, to afford to one belligerent Power the instruments and means of annoyance to be used against the other.

4. That it is lawful to naval Powers, when engaged in war, to blockade the ports of their enemies by cruising squadrons, *bona fide* allotted to that service, and fairly competent to its execution. That such blockade is valid and legitimate, although there be no design to attack or to reduce by force the port, fort, or arsenal to which it is applied.

And that the fact of the blockade, coupled with due notice thereof to the neutral Powers, shall affect, not only vessels actually intercepted in the attempt to enter the blockaded port, but those ships also, which shall elsewhere be met with, and shall be found to have been destined to such port, under the circumstances of the fact and notice of its blockade.

5. That the right of visiting and examining neutral vessels is a necessary consequence of these principles; and that by the law of nations (when unrestrained by treaty) this right is not in any manner affected by the presence of a neutral ship of war, having under its convoy merchant ships, either of its own nation or of any other country.

The first of these principles established the rule under which the belligerent refuses to neutrals the liberty of carrying on, during war, those parts of his enemy's trade from which they are usually excluded in time of peace. This rule had, in the British practice, been principally applied to the coasting and colonial trade of France. From both these branches of her trade, France had, in every period of peace, excluded all vessels but her own, with occasional exceptions only, such as more strongly proved her general principle of exclusion. But in war she had always found it impossible to maintain these monopolies. Pressed, on the one hand, by the naval superiority of Great Britain, which had rendered the navigation of French ships unsafe, and unable, on the other hand, to forego the resources which depend entirely on these important branches of her commerce, France had frequently endeavored, under these special circumstances, to open both her colonial and her coasting trade to neutral vessels. The right to carry on unmolested both these branches of commerce was claimed by the northern Powers in the league of armed neutrality of 1780 and of 1800. The claim, which the confederates thus asserted, was, so far as related directly to the coasting trade, expressed in the 3d article of the convention of 1800 as follows: "That neutral ships may navigate freely from port to port, and on the coasts of the belligerent Powers." The convention of 1801 had adopted very nearly the same expressions. By the first section, of what there, also, stood as the third article, neutral ships are permitted "to navigate freely to the ports and upon the coasts of the belligerent Powers." And in the next section of the same article, corresponding also (though with a variation respecting enemy's property) with a clause in the treaty of

armed neutrality of 1800, it was expressly declared, that "the effects embarked on board neutral ships shall be free, with the exception of contraband of war, and of enemy's property." A free navigation to the ports, and upon the coasts, of any country, must imply the liberty of navigating freely, both to and from all those ports, and upon every part of those coasts. If any limitation of this liberty had been intended, it would have been stated in the exceptions, specified in the convention, to the otherwise unrestrained freedom of navigation to the enemy's ports, which neutrals were thenceforward to enjoy. Among the exceptions thus specified, not even the most distant reference is to be found to that principle respecting the coasting trade which Great Britain had asserted. The liberty of sailing freely to any hostile port was plainly conceded; but it was not even intimated, much less declared, that this permission was not to extend to ships laden with commodities purchased at any other port of the same country. Nor would it be easy to explain in any other sense than that of a deliberate and intentional concession of the coasting trade, the admission of those words which guarantee to neutrals the free navigation, not only to the ports, but "upon the coasts of the Powers at war." If a direct trade only from the neutral country to the belligerent ports had been intended, the first words of the section had amply secured it. If it was meant to permit a partial and successive discharge of the different articles of the cargo, at different ports, this also was secured by the general and unqualified permission to sail freely to those ports. The words "upon the coasts" were first introduced into the treaty of armed neutrality in 1780. They were there employed for the express purpose of asserting the right of neutrals to carry on the coasting trade of the belligerents. From that treaty they had since been carefully transcribed, first into the hostile convention of 1800, and now again into the conciliatory arrangement of 1801, to which they were thenceforth to look for the rule of maritime law.

But even supposing the sense of the convention of 1801 was ambiguous, as to the coasting trade, there could be no doubt that it had surrendered to neutrals the right to carry on the enemy's colonial trade. The only relaxation which had been allowed by Great Britain, during the war with France, of the principle asserted by her, was that contained in the order in council of January 8, 1794 the effect of which was to permit neutral vessels to carry to the ports of the United States the produce of the French colonies. In other respects, the pre-

vious order of the 6th November, 1793 still remained in full force, unless it were annulled by the convention of 1801. The second section of the third article of this treaty distinctly provided, that all "the effects embarked on board neutral ships shall be free, with the exception of contraband of war and enemy's property; and it is agreed not to comprise in the number of the latter, the merchandise of the produce, growth, or manufacture of countries at war, which should have been acquired by the subjects of the neutral Power, and should be transported for their account; which merchandise can not be excepted, in any case, from the freedom granted to the flag of the said Power." It was impossible to apply these words to any other case than that of the trade in the produce of the French colonies, become the property of neutrals, which was declared to be free in neutral vessels, whatever might be the destination, whether to a neutral country or even to France itself.¹

As to the British claim, in respect to the liability to capture and confiscation of enemy's property, found on board of neutral vessels, Lord Grenville admitted that it was fully recognized by the second section of the third article of the convention, which implied a relinquishment of the opposite principle of *free ships, free goods* on the part of the northern Powers.

The stipulation in the third section of the same article, relating to contraband of war, must be considered in connection with the second *separate* article of the convention, by which the treaty of commerce of the 10/21 February, 1797, was "confirmed anew, and all its stipulations repeated to be maintained in their whole extent." The effect of this article was to reestablish the treaty of 1797, which had, by a temporary stipulation, admitted the subjects of the Russian Empire to carry, in their own ships, naval stores to the enemy's ports. The treaty itself would soon expire, but the privilege it granted to

¹It should be observed that the right to carry on the colonial trade granted by this article was subsequently limited by the explanatory declaration, which had already been signed at Moscow at the time when Lord Grenville was speaking, though unknown to him, by which it was agreed that "the freedom of commerce and navigation, granted by the said article to the subjects of a neutral Power, does not authorize them to carry, in time of war, the produce or merchandise of the colonies of the belligerent Power, direct to the continental possessions, nor *vice versa*, from the mother country to the enemy's colonies; but that the said subjects are, however, to enjoy the same advantages and facilities in this commerce as are enjoyed by the most favored nation, and especially by the United States of America." Martens, *Recueil de Traité*s, vol. 7, p. 271.

Russia of carrying naval stores would not expire with it. The article which contained that stipulation had been separated from all commercial stipulations, and transferred from the temporary treaty of 1797 into the convention of 1801, which was expressly declared to be perpetual.¹ The third and fourth sections of this article, which treat of contraband and of blockaded ports, did each of them expressly contain, not the concession of any special privilege to be thenceforth enjoyed by the contracting Parties only, but the recognition of an universal and preexisting right, which, as such, could not justly be refused to any other independent State. The third section, relating to contraband of war, was, in all its parts strictly declaratory. It was introduced by a separate preamble, announcing that its object was to prevent "all ambiguity or misunderstanding as to what ought to be considered as contraband of war." Conformably with this intention, the contracting Parties declared, in the body of the clause, what were the only commodities which they acknowledge as such. And this declaration was followed by a special reserve, that "it shall not prejudice their particular treaties with other Powers."

If the parties had intended to treat of this question only as it related to their own conduct towards each other, and to leave it, in that respect, on the same footing on which it stood before the formation of the hostile league of 1800, all mention of contraband in that part of the convention would evidently have been superfluous. Nothing more could, in that case, be necessary than to renew the former treaties which had specified the lists of contraband; and as that renewal was expressly stipulated in another article of the convention, the third section must be considered as introduced for some distinct purpose. It must therefore unquestionably be understood in that larger sense announced in its preamble, and expressed in the words of the declaration which it contained. It must be taken as laying down a general rule for all future discussions with any Power whatever, on the subject of military or naval stores, and as establishing a principle of law which was to decide universally on a just interpretation of the technical term of contraband of war. The reservation, made in the conclusion of the section, of special treaties with other Powers, was manifestly in-

¹"Article 8. The principles and measures adopted by the present act shall be alike applicable to all the maritime wars in which one of the two Powers may be engaged whilst the other remains neutral. These stipulations shall consequently be regarded as permanent, and shall serve for a constant rule to the contracting Powers in matters of commerce and navigation."

consistent with any more limited construction. It was unnecessary to declare that a stipulation, extending only to the Baltic Powers, should not prejudice the subsisting treaties of Great Britain with other nations. But the reserve was not only prudent, but necessary, when she undertook to lay down a universal principle, applicable to all her transactions with every independent State. In recognizing a claim of preexisting right, and in establishing a new interpretation of the law of nations, it was unquestionably of extreme importance expressly to reserve the more favorable practice which her subsisting treaties had established with some other Powers.

The interpretation given to the term contraband of war in the convention was drawn exclusively from the treaties of armed neutrality. In the league of 1780, the Empress of Russia had thought proper to declare that her engagements with Great Britain on the subject of contraband should thenceforth be considered as the invariable rule of natural and universal right. The convention of 1801 adopted the same rule, and adopted it on the same ground; enumerating all the commodities mentioned in the treaty of 1797 between Great Britain and Russia; declaring, that conformably to that treaty, the two sovereigns acknowledge those commodities alone as contraband of war. Great Britain must, in all future discussions with other neutral Powers, abide the consequences of that new rule of public law which she had herself thought proper to proclaim. She had publicly deserted her former claim, had confessed that naval stores ought not to be considered as contraband of war, and that she herself no longer acknowledged them as such. She had expressed this avowal in the very words originally intended for the purpose of making it universal; and had inserted it in her treaties with those very Powers who had confederated for no other object than to enforce her observance of it.

The stipulation on the subject of blockaded ports was also transcribed, with the variation of a single word, from the corresponding articles of the two conventions of armed neutrality. Those articles had declared, in substance, that no port should be considered as blockaded unless where the Power attacking it should maintain a squadron constantly stationed before it, and sufficiently near to create an evident danger of entering. In the convention of 1801, instead of the words, "*and sufficiently near,*" the contracting parties had substituted, "*or sufficiently near.*" And he had not the smallest doubt that by this minute

change, trifling and unimportant as it was, they intended to establish, in their full extent, the principles which Great Britain had maintained on this great question of maritime blockade, and which the article, in its original state, as it stood in the two neutral conventions was intended completely to subvert. But what he complained of, was the glaring impolicy of resting so important a principle on the minute and scarcely perceptible variation of a single article. He stated, however, two other objections to the article:

1. That when it spoke of the Power which attacks the port, it seems, in some degree, to countenance the unfounded assertion that a blockade by sea, like that by land, required an actual design of reducing or conquering the particular place to which it was applied. Whereas Great Britain maintained, in her naval wars with France, as Holland formerly maintained in her contest with Spain, that the blockade of one or more of the enemy's ports, or even of a considerable extent of his coasts, may lawfully be adopted for the special purpose of intercepting his supplies, in order, by this pressure, to reduce him to just and reasonable conditions of peace.

2. The second objection arose from the very nature of all naval operations, depending so much on the variations of weather, by which a squadron blockading a hostile port, and fully equal to the execution of that service, might, nevertheless, occasionally be unable to remain either stationary before the port, or even sufficiently near it to create at all times an evident danger of entering. And if, as the words of the article imported, the blockade was understood to continue so long only as that danger actually existed, and was on the other hand to be considered as being raised as often as the danger ceased, even if for the shortest interval, the utmost confusion must inevitably arise in all cases, but particularly in those of neutral ships met with at a distance from the blockaded port, but destined to it. It might indeed be asserted, without the least exaggeration, that even giving the fullest weight to that minute verbal change, on which so much was made to depend, a strict adherence to the letter of that stipulation must utterly destroy the whole British system of blockade by cruising squadrons.

Lord Grenville then proceeded to consider the stipulations of the convention as it respects the visiting and examining neutral vessels under convoy. The claim of the neutral league of 1800 confined this examination to a bare perusal of the papers of the neutral ships, which papers were, for that purpose, to be communicated to the belligerent

by the neutral officer on board his own vessel. Exactly the same proceeding had been stipulated in the convention of 1801, and it was added, in both treaties, that if the papers so communicated should be found to be regular, no further search should take place. An exception, however, was subjoined in that of 1801, which constituted the only practical difference on the subject between the two conventions. It was not, as before, laid down absolutely, that no further search should, in any case, take place, but that none should take place "unless some valid motive of suspicion shall exist." Good faith forbade its being contended that the right, from which the belligerent had agreed to abstain, except when some valid ground of suspicion should exist, might still be indiscriminately exercised at his discretion. As the practice had before stood, the inquiry into the facts of the case preceded all conclusions to be drawn from them. The suspicion arose from the search, and the detention of the ship was its just and natural effect. As the law would stand under the convention, suspicion must precede inquiry, and very few cases were likely to occur, where any valid ground of suspicion respecting a neutral ship could *bona fide* exist before the search. It was then but too manifest that, while they had, in words, established the right of visiting ships under neutral convoy, they had, in fact, so limited and circumscribed the practice, as utterly to renounce every beneficial purpose to which it could, by any possibility, be applied.¹

In order to complete our view of the controversy growing out of the armed neutrality, it is only necessary to add that both in the preliminary treaty of peace between France and Great Britain signed in 1801, and in the definitive treaty concluded at Amiens in the following year, a total silence was observed respecting the disputed points of maritime law. On the rupture which took place between Great Britain and Russia in consequence of the attack upon Copenhagen and capture of the Danish fleet, the Russian Government published on the 26th October, 1807, a declaration forever annulling the maritime convention of 1801, and proclaiming "anew the principles of the armed neutrality, that monument of the wisdom of the Empress Catharine and engaging never to derogate from this system.

The British Government published, on the 18th December, an answer

¹Speech delivered by Lord Grenville in the House of Lords, Nov. 13, 1801, *Parliamentary History of England*, vol. xxxvi, pp. 200-255. For the very lame and inconclusive replies made by other speakers, see *ibid.*, pp. 256-263.

to this declaration proclaiming "anew the principles of maritime law, against which was directed the armed neutrality under the auspices of the Empress Catharine."

It was stated that these principles had been recognized by all the Powers of Europe who framed that league, and no one more strictly conformed to them than Russia herself under the reign of the Empress Catharine. It was the right, as well as the duty of His Majesty to maintain these principles, which he was determined to do against every confederacy with the assistance of divine Providence. The subsequent treaties of peace and of commerce between the two Powers are totally silent upon the disputed points.¹

The treaties of peace signed at Paris in 1814-15, between France and the allied Powers, are equally silent upon the contested questions of maritime law.

¹Martens, *Manuel diplomatique sur les Droits des Neutres sur Mer*, p. 69. The questions involved in the controversy, respecting the armed neutrality, became the subject of polemic discussion by various public jurists, both in belligerent and neutral countries. Among these works one of the most remarkable was the examination of the judgment of Sir W. Scott in the case of the Swedish convoy by Professor J. F. W. Schlegel published at Copenhagen in 1800. It was replied to by Dr. Croke in his remarks upon Mr. Schlegel's work upon the visitation of neutral vessels under convoy, London, 1801.

Declaration of the Empress of Russia regarding the Principles of Armed Neutrality, addressed to the Courts of London, Versailles and Madrid, February 28, 1780¹

The Empress of all the Russias has so fully manifested her sentiments of equity and moderation, and has given such evident proofs, during the course of the war that she supported against the Ottoman Porte, of the regard she has for the rights of neutrality and the liberty of universal commerce, as all Europe can witness. This conduct, as well as the principles of impartiality that she has displayed during the present war, justly inspires her with the fullest confidence, that her subjects would peaceably enjoy the fruits of their industry and the advantages belonging to a neutral nation. Experience has nevertheless proved the contrary. Neither the above-mentioned considerations, nor the regard to the rights of nations, have prevented the subjects of Her Imperial Majesty from being often molested in their navigation, and stopped in their operations, by those of the belligerent Powers.

These hindrances to the liberty of trade in general, and to that of Russia in particular, are of a nature to excite the attention of all neutral nations. The Empress finds herself obliged therefore to free it by all the means compatible with her dignity and the well-being of her subjects; but, before she puts this into execution, and with a sincere intention to prevent any future infringements, she thought it but just to publish to all Europe the principles she means to follow, which are the most proper to prevent any misunderstanding, or any occurrences that may occasion it. Her Imperial Majesty does it with the more confidence, as she finds these principles coincident with the primitive right of nations which every people may reclaim, and which the belligerent Powers can not invalidate without violating the laws

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 158.

of neutrality, and without disavowing the maxims they have adopted in the different treaties and public engagements.

They are reducible to the following points:

(1) That all neutral ships may freely navigate from port to port, and on the coasts of nations at war.

(2) That the effects belonging to the subjects of the said warring Powers shall be free in all neutral vessels, except contraband merchandise.

(3) That the Empress, as to the specification of the above-mentioned merchandise, holds to what is mentioned in the 10th and 11th articles of her treaty of commerce with Great Britain, extending her obligations to all the Powers at war.

(4) That, to determine what is meant by a blockaded port, this is only to be understood of one which is so well kept in by the ships of the Power that attacks it, and which keep their places, that it is dangerous to enter into it.

(5) That these principles serve as a rule for proceedings and judgments upon the legality of prizes.

Her Imperial Majesty, in making these points public, does not hesitate to declare, that to maintain them, and to protect the honor of her flag, the security of the trade and navigation of her subjects, she has prepared the greatest part of her maritime forces. This measure will not, however, influence the strict neutrality she does observe, and will observe so long as she is not provoked and forced to break the bounds of moderation and perfect impartiality. It will be only in this extremity that her fleet have orders to go wherever honor, interest, and need may require.

In giving this solemn assurance with the usual openness of her character, the Empress can not do other than promise herself that the belligerent Powers, convinced of the sentiments of justice and equity which animate her, will contribute towards the accomplishment of these salutary purposes, which manifestly tend to the good of all nations, and to the advantage even of those at war. In consequence of which, Her Imperial Majesty will furnish her commanding officers with instructions conformable to the above-mentioned principles, founded upon the primitive laws of people, and so often adopted in their conventions.

**Russian Memorandum presented to the States-General of the
Netherlands, April 3, 1780¹**

High and Mighty Lords:

The underwritten Envoy Extraordinary from the Empress of all the Russias has the honor to communicate to you a copy of the declaration which the Empress his sovereign has made to the belligerent Powers. Your High Mightinesses may look upon this communication as a particular mark of the attention of the Empress for the republic, which is equally interested in the reasons which occasioned the declaration. He has further orders to declare to Your High Mightinesses, in the name of Her Imperial Majesty, that how desirous soever she may be on the one hand to maintain the strictest neutrality during the present war, yet Her Majesty is as determined to take the most efficacious means to support the honor of the Russian flag, the security of the trade, and the navigation of her subjects, and not suffer either to be hurt by any of the belligerent Powers; that, in order to prevent on this occasion any misunderstanding or false interpretation, she thought it necessary to specify in the declaration the limits of a free trade, and what is called contraband. That, if the definition of the former is founded upon the clearest notions of natural right, the latter is literally taken from the treaty of commerce between Russia and Great Britain, by which Her Imperial Majesty means incontestably to prove her good faith and impartiality towards each party; that she consequently apprehends that the other trading Powers will immediately come into her way of thinking relative to neutrality.

From these considerations, Her Imperial Majesty has ordered the underwritten to invite Your High Mightinesses to make a common cause with her, as such an union may serve to protect the trade and navigation, and at the same time observe a strict neutrality, and to communicate to Your High Mightinesses the regulation she has in consequence taken.

The same invitation has been made to the Courts of Copenhagen, Stockholm and Lisbon, in order that by the united endeavors of all the neutral maritime Powers, a natural system, founded on justice, might be established and legalized in favor of the trade of neutral nations, which by its real advantages might serve for a rule for future ages.

The underwritten does not doubt but your High Mightinesses will,

¹*Annual Register*, 1780, p. 346. ¹

without delay, take the invitation of Her Imperial Majesty into consideration, and concur in immediately making a declaration to the belligerent Powers, founded on the same principles as that of the Empress, explaining at the same time the nature of a free and contraband trade, conformable to their respective treaties with the other nations.

For the rest, the underwritten has the honor to assure your High Mightinesses, that if, to establish such a glorious and advantageous system upon the most solid basis, they wished to open a negotiation with the above-mentioned neutral Powers on this subject, the Empress, his sovereign, is ready to join you.

Your Mightinesses will easily see the necessity of accelerating your resolutions upon objects of such importance and advantage for humanity in general. The underwritten begs of you to give him a speedy answer.

DEMETRI PRINCE GALLITZIN

HAGUE, *April 3, 1780.*

Explanations demanded by the Court of Sweden relative to the Russian Project for an Armed Neutrality, April 5, 1780¹

ARTICLE 1

How and in what manner a reciprocal protection and mutual assistance shall be given.

ARTICLE 2

Whether each particular Power shall be obliged to protect the general commerce of the whole, or if in the meantime it may employ a part of its armament in the protection of its own particular commerce.

ARTICLE 3

If several of these combined squadrons should meet, or, for example, one or more of their vessels, what shall be the rule of their con-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 170. See also *Annual Register*, 1780, p. 354.

duct towards each other, and how far shall the neutral protection extend.

ARTICLE 4

It seems essential to agree upon the manner in which representations shall be made to the Powers at war, if, notwithstanding our measures, their ships of war, or armed vessels, should continue to interrupt our commerce in any manner. Must these remonstrances be made in the general name of the united Powers, or shall each particular Power plead its own cause only?

ARTICLE 5

Lastly, it appears essentially necessary to provide against this possible event, where one of the united Powers, seeing itself driven to extremities against any of the Powers actually at war, should claim the assistance of the allies in this convention to do her justice; in what manner can this be best concerted? A circumstance which equally requires a stipulation, that the reprisals in that case shall not be at the will of such party injured, but that the common voice shall decide: otherwise an individual Power might at its pleasure draw the rest against their inclinations and interests into disagreeable extremities, or break the whole league, and reduce matters into their original state, which would render the whole fruitless and of no effect.

**Extract from the Register of the Resolutions of the States-General
of Holland and West Friesland, April 13, 1780¹**

It has seemed fit and it has been resolved that the affairs of the States-General be so conducted that it shall be stated to the Prince de Gallizin, Envoy Extraordinary of Her Imperial Majesty of all the Russias, in reply to his memorial of the 3rd of this month, that Their High Mightinesses have received with great satisfaction the communication which it has pleased Her Imperial Majesty to send them con-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 166.

cerning her views and the declaration presented to the Courts of Versailles, of Madrid, and of London.

That Their High Mightinesses regard this communication as a striking mark of Her Imperial Majesty's affection for the Republic, and that they consider it an honor and a duty to make a frank and cordial reply.

That Their High Mightinesses can not help perceiving and admiring, as a fresh proof of the well-known high-mindedness and justice of Her Imperial Majesty, and the object she is endeavoring to accomplish and the means she has adopted to preserve during the present war the strictest neutrality toward the belligerent Powers, not only to ensure the honor of the Russian flag and to maintain the commerce and navigation of her subjects by not permitting any of the Powers at war to do it harm, but also in the interest of the peace and liberty of Europe, and to establish on the solid foundations of justice and the law of nations an equitable system of navigation and commerce for neutral Powers.

That Their High Mightinesses desire, no less than Her Imperial Majesty, to observe the strictest neutrality during the present war, but that they have themselves especially experienced the prejudice which the commerce and navigation of neutral Powers have suffered as the result of the vague and uncertain principles which the belligerent Powers have adopted concerning the rights of neutrals, according to the dictates of their individual interests or the necessities of the war operations; that they, therefore, like Her Imperial Majesty, regard it as absolutely necessary for the neutral Powers to cooperate in determining their aforesaid rights and in establishing them on a firm basis.

That, with respect to the determination of these rights, Their High Mightinesses, by conforming to the five points set forth in Her Imperial Majesty's declaration to the Courts of Versailles, Madrid and London, which was communicated to them, in her behalf, on the 3rd of this month, by Prince de Gallizin, stand ready to follow the example of Her Imperial Majesty, and to declare to the belligerent Powers, as she has done, that Their High Mightinesses are entirely disposed to enter into negotiations with Her Imperial Majesty and with the other neutral Powers to consider what measures should be taken in order that freedom of commerce and navigation may be most effectually maintained, with strict observance of neutrality toward the belligerent Powers.

That an extract from the resolution which shall be adopted on this subject shall be handed by their agent, van der Burch de Spieringshoek, to Prince de Gallizin, Envoy Extraordinary of Her Majesty the Empress of all the Russias, with the request that it be brought to the knowledge of his sovereign, and that he support it in the most favorable manner with his good offices.

That an extract shall also be sent to Mr. de Swaert, resident of Their High Mightinesses at the Court of Russia, for his information and instruction, with orders to cooperate, so far as it lies in his power, toward the success of the good intentions of Their High Mightinesses.

That the said extract shall also be addressed to the Ministers of the Republic at the Courts of Copenhagen, Stockholm, and Lisbon, for their guidance, with orders to join with the Minister of Russia at the Courts where they reside and to support their efforts to the best of their ability.

Declaration of the Court of England to the States-General of the Netherlands, April 17, 1780¹

Since Great Britain was drawn into an involuntary war with France and Spain, the King's Ambassador to the States-General of the United Provinces has presented a number of memoranda demanding the assistance stipulated by treaties. Although these representations were reiterated in the most urgent manner in the memorandum of March 21, they have met with no response, and their High Mightinesses have displayed no intention to subscribe to them.

By thus deferring the fulfilment of their most positive engagements, they are deserting the alliance which has existed so long between the Crown of Great Britain and the Republic, and are placing themselves on the level of neutral Powers that are not bound to this country by any treaty. The principles of wisdom and equity, consequently, require the King to consider the States no longer in any other relation than the distant one in which they have placed themselves, and His Majesty, having taken this subject under consideration, has, with the

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 173.

advice of his Council, deemed it proper to order the immediate carrying out of the measures which were formally set forth in the memorandum of March 21, last, and which had previously been hinted to Count de Welderen, Envoy Extraordinary and Plenipotentiary of the Republic, in a verbal declaration by Lord Stormont, one of the Secretaries of State, nearly two months before the delivery of the aforesaid memorandum.

For these reasons, the King, with the advice of his Council, declares that the subjects of the United Provinces shall henceforth be considered on the footing of those of neutral Powers, which have no treaty privileges. By these presents, His Majesty suspends provisionally and until further orders all stipulations specifically intended to favor in time of war the freedom of navigation and commerce of the subjects of the States-General, as set forth in the various treaties in force between His Majesty and the Republic, and particularly in the marine treaties concluded between Great Britain and the United Provinces at London on December 1, 1674.

His Majesty, animated by a feeling of humanity, desiring nevertheless to spare the interests of individuals, and not seeking to cause them loss by an act taking them unawares, declares, moreover, with the advice of his Council, that the present ordinance shall not go into effect until the following dates, to wit:

In the north seas and channel twelve days from this date.

From the channel, the British seas and the north seas to the Canary Islands inclusive, both in the ocean and in the Mediterranean, the time will be six weeks from the date of these presents.

The period will be three months from the Canary Islands to the equinoctial line or equator.

Finally, it will be six months, for the waters situated beyond the equator, and in general in all other quarters of the world without exception, or without a more specific determination of time or place.

RESCRIPT ADDED TO THE FOREGOING ORDER

Inasmuch as, in accordance with our order in Council, dated April 17, 1780, the various treaties granting special privileges to subjects of the States-General of the United Provinces in the matter of their commerce and navigation in time of war, are suspended, and as the subjects of the States-General are to be considered on the same footing as those of other neutral States having no treaty privileges, until it

shall please us formally to signify the contrary, the commanders of our war-ships and those of all ships and vessels which have letters of marque and of reprisal are authorized by these presents to seize and detain all ships and vessels belonging to subjects of the States-General whenever they are found to have on board any effects belonging to the enemies of His Majesty or effects that are considered by the general law of nations as contraband of war.

Reply of the King of Spain to the Declaration of the Empress of Russia, April 18, 1780¹

The King, being informed of the Empress's sentiments with respect to the belligerent and neutral Powers, by a memorial remitted to the Comte de Florida Blanca, on the 15th instant by Mr. Etienne de Zinowief, Minister to Her Imperial Majesty: the King considers this as the effect of a just confidence which His Majesty has on his part merited; and it is yet more agreeable that the principles adopted by this sovereign should be the same as have always guided the King, and which His Majesty has for a long time, but without success, endeavored to cause England to observe, while Spain remained neuter. These principles are founded in justice, equity, and moderation; and these same principles Russia and all the other Powers have experienced in the resolutions formed by His Majesty; and it has been entirely owing to the conduct of the English navy, both in the last and the present war (a conduct wholly subversive of the received rules among neutral Powers) that His Majesty has been obliged to follow their example; since the English paying no respect to a neutral flag, if the same be laden with effects belonging to the enemy, even if the articles should not be contraband, and that flag not using any means of defending itself, there could not be any just cause why Spain should not make reprisals, to indemnify herself for the great disadvantages she must otherwise labor under. The neutral Powers have also laid themselves open to the inconveniences they have suffered, by fur-

¹*Annual Register*, 1780, p. 350. French text at Martens, *Recueil de Traités*, vol. 3, p. 164.

nishing themselves with double papers, and other artifices, to prevent the capture of their vessels; from which have followed captures and detentions innumerable, and other disagreeable consequences, though in reality not so prejudicial as pretended; on the contrary, some of these detentions have turned to the advantage of the proprietors, as the goods, being sold in the port where they were condemned, have frequently gone off at a higher price than they would have done at the place of their destination.

The King, nevertheless, not contented with these proofs of his justification, which have been manifest to all Europe, will this day have the glory of being the first to give the example of respecting the neutral flag of all the Courts, that have consented, or shall consent, to defend it, till His Majesty finds what part the English navy takes, and whether they will, together with their privateers, keep within proper bounds. And to show to all the neutral Powers how much Spain is desirous of observing the same rules in time of war as she was directed by whilst neuter, His Majesty conforms to the other points contained in the declaration of Russia. To be understood, nevertheless, that, with regard to the blockade of Gibraltar, the danger of entering subsists, as determined by the fourth article of the said declaration. These dangers may, however, be avoided by the neutral Powers, if they conform to those rules of precaution established by His Majesty's declaration of the 13th of last March, which has been communicated to the Court of Petersburg by his Minister.

FLORIDA BLANCA

At ARANJUEZ, 18 April, 1780.

Reply of the Court of Great Britain to the Declaration of the Empress of Russia, April 23, 1780¹

During the course of the war, wherein His Britannic Majesty finds himself engaged through the unprovoked aggression of France and Spain, he hath constantly manifested his sentiments of justice, equity,

¹*Annual Register*, 1780, p. 349. French text at Martens, *Recueil de Traités*, vol. 3, p. 160.

and moderation, in every part of his conduct. His Majesty hath acted towards friendly and neutral Powers according to their own procedure respecting Great Britain, and conformable to the clearest principles, generally acknowledged as the law of nations, being the only law between Powers where no treaties subsist, and agreeable to the tenor of his different engagements with other Powers; those engagements have altered this primitive law, by mutual stipulations, proportioned to the will and convenience of the contracting Parties.

Strongly attached to Her Majesty of all the Russias, by the ties of reciprocal friendship, and common interest, the king, from the commencement of those troubles, gave the most precise orders respecting the flag of Her Imperial Majesty, and the commerce of her subjects, agreeable to the law of nations, and the tenor of the engagements stipulated by his treaty of commerce with her, and to which he shall adhere with the most scrupulous exactness.

The orders to this intent have been renewed, and the utmost care will be taken for their strictest execution.

It may be presumed, not the least irregularity will happen; but in case any infringements, contrary to these repeated orders, take place, the courts of admiralty, which in this, like all other countries, are established to take cognizance of such matters, and in all cases do judge solely by the law of nations, and by the specific stipulations of different treaties, will redress every hardship in so equitable a manner, that Her Imperial Majesty shall be perfectly satisfied, and acknowledge a like spirit of justice which she herself possesses.

Extract from the Register of Resolutions of the States-General of the Netherlands, April 24, 1780, replying to the Russian Memorandum¹

Having deliberated by supposition on the memorandum which the Prince Gallitzin, Envoy Extraordinary of Her Majesty the Empress of all the Russias, presented to the Assembly on the 3d instant, accompanied by a declaration made by Her said Imperial Majesty

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 168.

to the Courts of England, France, and Spain, with regard to the freedom of commerce and navigation of her subjects, in which memorandum this Minister makes known to Their High Mightinesses the disposition of his sovereign to protect, in concert with neutral Powers, the commerce and navigation of their respective subjects, as more fully set forth in the above-mentioned documents of the 3d; it has been deemed well and it has been decided to reply to the Prince Gallitzin with regard to his said memorandum that Their High Mightinesses have received with great satisfaction the communication respecting her views which Her Imperial Majesty has been pleased to have presented to them, and the declaration that she has had submitted to the Courts of London, Versailles, and Madrid; that Their High Mightinesses look upon this communication as a striking proof of the fact that Her Imperial Majesty is well disposed toward the Republic and that they feel it to be an honor and a duty to reply cordially and sincerely; that Their High Mightinesses commend and consider as a further effect of the recognized magnanimity and justice of Her Imperial Majesty, as well as the goal which she has set before herself, that the means which she has conceived to maintain during the present war the most scrupulous neutrality with the belligerent Powers, and to assure not only the honor of the flag of Russia and the freedom of commerce and of navigation of her subjects, and not to permit any of the Powers that are now at war to inflict the slightest injury upon them, but also to protect the liberties and tranquillity of Europe, and to fix and establish upon the most solid foundations of equity and the law of nations, and of treaties still in force, an equitable system for the navigation and commerce of neutral Powers.

That Their High Mightinesses, like Her Imperial Majesty, desiring to observe a strict neutrality during the present war, have experienced only too well the injuries suffered by the navigation and commerce of neutral Powers through the vague and arbitrary conceptions held by the belligerent Powers on the right of neutrals, which are influenced by their individual interests and their war operations, and it is for this reason that Their High Mightinesses, like Her Imperial Majesty, deem it absolutely necessary that this right be established upon solid foundations and maintained in concert by the maritime neutral Powers; that with respect to the determination of this right Their High Mightinesses, conforming entirely to the five points contained in the declaration made by Her Imperial Majesty to the Courts of

Versailles, Madrid, and London, and communicated in her name to Their High Mightinesses on April 3 by the Prince Gallitzin, are, following the example of Her Imperial Majesty, ready to make a similar declaration to the belligerent Powers. Their High Mightinesses being thus disposed to enter into a conference with this Princess and the other neutral maritime Powers respecting the measures by means of which, by the observance of strict neutrality between the Powers at war, freedom of navigation and commerce may be maintained with their united forces in the most effectual manner, both now and hereafter.

An extract of the present resolution of Their High Mightinesses shall be transmitted by their agent van der Burch de Spieringshoeck to the Prince Gallitzin, Envoy Extraordinary of Her Majesty the Empress of all the Russias, who shall be requested to communicate it to Her Imperial Majesty and to present to her this reply under the most favorable aspect, accompanying it with his good offices.

Reply of the King of France to the Declaration of the Empress of Russia, April 25, 1780¹

The war in which the King is engaged having no other object than the attachment of His Majesty to the freedom of the seas, he could not but with the truest satisfaction see the Empress of Russia adopt the same principle and resolve to maintain it. That which Her Imperial Majesty claims from the belligerent Powers is no other than the rules already prescribed to the French marine, the execution of which is maintained with an exactitude known and applauded by all Europe.

The liberty of neutral vessels, restrained only in a few cases, is the direct consequence of neutral right, the safeguard of all nations, and the relief even of those at war. The King has been desirous, not only to procure a freedom of navigation to the subjects of the Empress of Russia, but to those of all the States who hold their neutrality, and that upon the same conditions as are announced in the treaty to which His Majesty this day answers.

¹*Annual Register*, 1780, p. 349; Martens, *Recueil de Traités*, vol. 3, p. 162.

His Majesty thought he had taken a great step for the general good, and prepared a glorious epocha for his reign, by fixing by his example, the rights which every belligerent Power may, and ought to acknowledge to be due to neutral vessels. His hopes have not been deceived, as the Empress, in avowing the strictest neutrality, has declared in favor of a system which the King is supporting at the price of his people's blood, and that Her Majesty adopts the same rights as he would wish to make the basis of the maritime code.

If fresh orders were necessary to prevent the vessels of Her Imperial Majesty from being disturbed in their navigation by the subjects of the King, His Majesty would immediately give them; but the Empress will no doubt be satisfied with the dispositions made by His Majesty in the regulations he has published. They do not hold by circumstances only, but they are founded on the right of nations, and quite suitable to a prince who finds the happiness of his own kingdom in that of the general prosperity. The King wishes Her Imperial Majesty would add to the means she has fixed to determine what merchandises are reckoned contraband in time of war, precise rules in the form of the sea papers with which the Russian ships will be furnished.

With this precaution, His Majesty is assured nothing will happen to make him regret the having put the Russian navigators on as advantageous a footing as can be in time of war. Happy circumstances have more than once occurred to prove to the Courts how important it is for them to explain themselves freely relative to their respective interests.

His Majesty is very happy to have explained his way of thinking to Her Imperial Majesty upon so interesting a point for Russia, and the trading Powers of Europe. He the more sincerely applauds the principles and views of the Empress, as His Majesty partakes of the same sentiments which have brought Her Majesty to adopt those measures, which must be to the advantage of her own subjects, and all other nations.

VERSAILLES, *April 25, 1780.*

Reply of the Court of Russia to the Explanations demanded by
Sweden relative to the Project for an Armed Neutrality, April
29, 1780¹

ARTICLE 1

As to the manner in which protection and mutual assistance shall be granted, it must be settled by a formal convention, to which all the neutral Powers will be invited, the principal end of which is, to ensure a free navigation to the merchant ships of all nations. Whenever such vessel shall have proved from its papers, that it carries no contraband goods, the protection of a squadron, or vessels of war, shall be granted her, under whose care she shall put herself, and which shall prevent her being interrupted. From hence it follows:

ARTICLE 2

That each Power must concur in the general security of commerce. In the meantime, the better to accomplish this object, it will be necessary to settle, by means of a separate article, the places and distances which may be judged proper for the station of each Power. From that method will arise this advantage, that all the squadrons of the allies will form a kind of chain, and be able to assist each other; the particular arrangement to be confined only to the knowledge of the allies, though the convention in all other points, will be communicated to the Powers at war, accompanied with all the protestations of a strict neutrality.

ARTICLE 3

It is undoubtedly the principle of a perfect equality, which must regulate this point. We shall follow the common mode with regard to safety. In case the squadrons should meet and engage, the commanders will conform to the usages of the sea service, because, as is observed above, the reciprocal protection, under these conditions, should be unlimited.

ARTICLE 4

It seems expedient that the representations mentioned in this article be made by the party aggrieved; and that the Ministers of the other

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 171. See also *Annual Register*, 1780, p. 355.

confederate Powers support those remonstrances in the most forcible and efficacious manner.

ARTICLE 5

We feel all the importance of this consideration; and, to render it clear, it is necessary to distinguish the case.

If any one of the allied Powers should suffer itself to be drawn in by motives contrary to the established principles of a neutrality and perfect impartiality, should injure its laws, or extend their bounds, it can not certainly be expected that the others should espouse the quarrel; on the contrary, such a conduct would be deemed an abandoning the ties which unite them. But if the insult offered to one of the allies should be hostile to the principles adopted and announced in the face of all Europe, or should be marked with the character of hatred and animosity, inspired by resentment, these common measures of the confederacy, which have no other tendency than to make, in a precise and irrevocable manner, laws for the liberty of commerce, and the rights of every neutral nation, then it shall be held indispensable for the united Powers to make a common cause of it (at sea only) without its being a ground-work for other operations, as these connections are purely maritime, having no other object than naval commerce and navigation.

From all that is said above, it evidently results, that the common will of all, founded upon the principles admitted and adopted by the contracting parties, must alone decide, and that it will always be the fixed basis of the conduct and operations of this union. Finally, we shall observe, that these conventions suppose no other naval armament than what shall be conformable to circumstances, according as those shall render them necessary, or as may be agreed. It is probable that this agreement, once ratified and established, will be of the greatest consequence; and that the belligerent Powers will find in it sufficient motives to persuade them to respect the neutral flag, and prevent their provoking the resentment of a respectable communion, founded under the auspices of the most evident justice, and the sole idea of which is received with the universal applause of all impartial Europe.

**Declaration of His Danish Majesty regarding the Neutrality
of the Baltic Sea, communicated to the Courts of the Belligerent
Powers, May 8, 1780¹**

The States of the King of Denmark and Norway are situated in such a way that the commerce of his subjects with the Provinces belonging to his Crown would be disturbed, unless His Majesty took all measures capable of guaranteeing the Baltic and its coasts from hostilities and acts of violence of all kinds, and of protecting it from raids by privateers and armed vessels.

In order, therefore, to keep open, free and tranquil communication between his Provinces, the King has resolved that the Baltic Sea being a closed sea, incontestably so by reason of its geographical situation, where all nations should and may navigate in peace and enjoy all the advantages of perfect tranquillity, His Majesty could not admit thereto armed vessels of the Powers at war for the purpose of committing acts of hostility against any one whatsoever.

The other two Courts of the north adopt and announce the same system, which is the more just and natural because all the Powers whose States surround the Baltic enjoy the most profound peace and regard it as one of the greatest blessings that sovereigns can secure to their subjects.

**Russian Ordinance concerning Navigation under the Merchant Flag
of Russia, May 19, 1780²**

ARTICLE 1

Merchant ships may not take part in the war, either directly or indirectly, or under any pretext whatsoever; neither may they give aid to any of the belligerent Powers by supplying it with contraband goods under the flag of Russia. Contraband goods comprise specifically cannons, mortars, muskets, pistols, bombs, grenades, bullets

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 175.

²Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 271.

of balls suitable for shooting, guns, gun-flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, scabbards, cartridge-boxes, saddles, and bridles. Merchant ships must also take great care not to have on board a greater quantity of such munitions of war than it needs for its own use, that is to say, a quantity sufficient to supply each sailor or passenger.

ARTICLE 2

All other goods, to whomsoever they may belong, and even if they belong to subjects of one of the belligerent Powers, may be freely transported on Russian vessels, and shall enjoy, together with the goods of our subjects, the protection of the Russian flag, except the goods mentioned in Article 1 under the head of contraband, which are declared to be such in Article 11 of our treaty of commerce with England. In consideration of this security of goods permitted on board neutral vessels, our subjects must take care not to ship effects belonging to them on vessels of the nations at war, in order to avoid any unpleasantness or untoward incident.

ARTICLE 3

Every vessel sailing from the port of this city or from any other port of our Empire must be supplied with sufficient proofs that it belongs to Russian subjects; that is to say, the customary ship's register and a customs certificate setting forth:

- (1) The kind and quantity of the goods on board.
- (2) For whose account they have been purchased and to whom they are shipped.
- (3) To what port and to whom the vessel and its cargo are consigned.

For greater security the certificates issued by the custom house shall be viséd by the admiralty, or in its absence by the magistrate of the place.

ARTICLE 4

These prerogatives shall be enjoyed not only by our born subjects but also by foreigners, who are domiciled under our rule and pay public taxes like our own subjects; that is to say, as long as they dwell in our country, since in any other case they would not be permitted to use the merchant flag of Russia.

ARTICLE 5

Each individual Russian vessel, even though a single owner sends two or three vessels at the same time to the same place, must be provided with the documents mentioned in Article 3, which may prove their ownership in case the vessels should become separated during the voyage or in case they should be forced to follow different courses.

ARTICLE 6

It is forbidden for any Russian vessel to have false or equivocal bills of lading, charter parties, or other ship's papers, still more false declarations, inasmuch as these last always expose them to inevitable danger. Therefore special attention should be given to see that the documents are in good order and state clearly, as specified above, the true destination of the vessel and the character of its cargo. It is also necessary that the contract between the owner of the goods and the master of the vessel or the agreement known as the charter party be always on board. But, as it quite often happens that the owner of the goods, in shipping them, either on his own vessel or on some other neutral vessel chartered by him, decides in advance, solely on speculation, to sell them in a certain port, and, in case the price in that port is too low, in some more distant port, he must not, in such a case, fail to specify and determine the two ports in the order of the course and of their situation, in one and the same bill of lading, and not in two. This same precaution must be observed with regard to charter parties, in order that there may be no differences between them and the bills of lading. And, in case any of our subjects, in contempt of these provisions, should stoop to artifice and duplicity, they may be assured that they shall never enjoy our protection, which shall be given only to lawful and innocent commerce, and under no circumstances to illicit and fraudulent trade.

ARTICLE 7

Every Russian vessel which, after having unloaded its cargo in some foreign port, purposes to return to its country or to proceed further to some other foreign point, must provide itself in this port, and in any other where it may stop to trade, with the documents required by the practice of the country, in order that it may be ascertained at any time to what nation the vessel belongs, from what port it comes, for what port it is bound, and with what new goods it has been loaded.

ARTICLE 8

Inasmuch as the aforesaid documents are absolutely necessary to prove neutral ownership of goods on board the ship, particular care must be exercised not to throw them overboard, or any other writings or papers without exception, or on any occasion whatever, particularly on encountering another vessel, since by such a proceeding the vessel may lay itself open to well founded suspicion and to disagreeable consequences.

ARTICLE 9

Care should be taken that there be not on board a Russian vessel a merchant, a commercial employee, or other officer, or more than one third of the sailors, who are subjects of one of the belligerent Powers, since otherwise such a vessel might meet with many unpleasant incidents. Vessels purchased in time of war from subjects of belligerent Powers would be exposed to similar complications. Therefore, now and as long as the present war lasts, they may not be purchased for any other purpose than for navigation in the Baltic or in the Black Sea.

ARTICLE 10

It is forbidden, in general, to carry any goods from any point whatever to places that are now under blockade or siege, by land or by sea: and if any of our merchants should risk such unlawful commerce, they shall not, in spite of their loss, have the slightest right to seek our protection.

ARTICLE 11

All our subjects, who happen to be in foreign lands for commercial purposes, must conform strictly to the local mercantile laws in force, as well as to the ordinances of the place where they reside or to which they send their vessels. And in order that these laws and ordinances may be known to them so far as possible, the Department of Foreign Affairs shall communicate to our Chamber of Commerce all papers relating thereto, so that all merchants may be informed thereof by means of the gazettes.

ARTICLE 12

Our purpose to protect and to defend in the most effectual manner the commerce and navigation of our faithful subjects in nowise contemplates that our course shall result in injury to any of the belligerent

Powers, or that individual merchants take advantage of it for the purpose of making unlawful gains. Therefore we expressly forbid the merchants of our empire to permit foreigners to sail ships or to carry on commerce under their name. In case of contravention of our will in this respect, the guilty party shall forfeit his right to engage in maritime commerce and to enjoy our imperial protection therein.

If our subjects, who are engaged in maritime commerce, strictly comply with the terms of this ordinance, they can count, in return, on our full and unlimited protection in their business in a foreign country, as well as on the attentive and zealous intercession of the Minister, agents, or consuls, who reside there in our behalf. To this end our Department of Foreign Affairs will provide them in due time with proper instructions. On the other hand, those of our subjects who shall not observe these rules can not have the slightest claim on our protection in the misfortunes and losses which may result from wilfully neglecting to use the necessary circumspection enjoined upon them. The Chamber of Commerce, in notifying our present ordinance to Russian merchants engaged in commerce in the ports, shall not fail at the same time to supply the custom houses with the necessary instructions relating thereto, nor to inform the heads of the governments where there are ports of our will, in order that it may be uniformly observed in all the tribunals, in so far as they are concerned therewith.

Given at Czarsko-Zelo, May 8/19, 1780.

(Signed) CATHERINE

**Reply of the Court of France to the Danish Declaration regarding
the Neutrality of the Baltic Sea, May 25, 1780¹**

Far from wishing to extend the theater of the war, the King has constantly manifested his desire to restrict it. The solicitude of His Majesty to fix precisely the portions of neutral coasts where his subjects may not attack the enemy has already proved how greatly he respected the sovereignty of all the Powers that border on the Baltic Sea; since they have declared themselves neutral, His Majesty has

¹Translation. French text at Martens, vol. 3, 176.

regarded that sea as closed by order of its sovereigns. He shall continue to follow the same course, and since it is apparently the wish of His Danish Majesty that orders be given that no French vessel shall commit acts of hostility beyond the sound, the Envoy of Denmark can assure His Majesty that the King will gladly comply with his desire.

His Majesty has nothing more at heart than to do what is advantageous and agreeable to neutral Powers, those Powers especially that show themselves to be the protectors of the freedom of the seas, and in particular His Danish Majesty, whose confidence and friendship he earnestly desires to keep.

(Signed) VERGENNES

Declaration of His Danish Majesty to the Courts of London, Versailles and Madrid, July 8, 1780¹

If the most exact and perfect neutrality, with the most regular navigation, and the most inviolable respect to treaties, could have kept free the commerce of the subjects of the King of Denmark and Norway from the inroads of the Powers with whom he is at peace, free and independent, it would not be necessary to take measures to ensure to his subjects that liberty to which they have the most incontrovertible right. The King of Denmark has always founded his glory and his grandeur upon the esteem and confidence of other people. It has been his rule, from the beginning of his reign, to testify to all the Powers, his friends, a conduct the most capable of convincing them of his pacific intentions, and of his desire to contribute to the general happiness of Europe. His proceedings have always been conformable to these principles, against which nothing can be alleged; he has not, till now, addressed himself, but to the Powers at war, to obtain a redress of his griefs; and he has never wanted moderation in his demands, nor acknowledgments when they have received the success they deserved: but the neutral navigation has been too often

¹Translation. For the French text, see Martens, *Recueil de Traités*, vol. 3, p. 178. See also, *Annual Register*, 1780, p. 352.

molested, and the most innocent commerce of his subjects too frequently troubled; so that the King finds himself obliged to take proper measures to assure to himself and his allies the safety of commerce and navigation, and the maintenance of the inseparable rights of liberty and independence. If the duties of neutrality are sacred, the law of nations has also its rights avowed by all impartial Powers, established by custom, and founded upon equity and reason. A nation independent and neuter, does not lose by the war of others the rights which she had before the war, because peace exists between her and all the belligerent Powers. Without receiving or being obliged to follow the laws of either of them, she is allowed to follow, in all places (contraband excepted), the traffic which she would have a right to do, if peace existed with all Europe, as it exists with her. The King pretends to nothing beyond what the neutrality allows him. This is his rule, and that of his people; and the King can not accord to the principle, that a Power at war has a right to interrupt the commerce of his subjects. He thinks it due to himself and his subjects, faithful observers of these rules, and to the Powers at war themselves, to declare to them the following principles, which he has always held, and which he will always avow and maintain, in concert with the Empress of all the Russias, whose sentiments he finds entirely conformable with his own.

(1) That neutral vessels have a right to navigate freely from port to port, even on the coasts of the Powers at war.

(2) That the effects of the subjects of the Powers at war shall be free in neutral vessels, except such as are deemed contraband.

(3) That nothing is to be understood under the denominations of contraband, that is not expressly mentioned as such in the third article of his treaty of commerce with Great Britain, in the year 1670, and the 26th and 27th articles of his treaty of commerce with France, in the year 1742; and the King will equally maintain these rules with those Powers with whom he has no treaty.

(4) That he will look upon a blockaded port as one into which no vessel can enter without evident danger, on account of vessels of war stationed there, which form an effectual blockade.

(5) That these principles serve for rules in procedure, and that justice shall be expeditiously rendered, after the rules of the sea, conformably to treaty and usage received.

(6) His majesty does not hesitate to declare, that he will maintain

these principles with the honor of his flag, and the liberty and independence of the commerce and navigation of his subjects; and that it is for this purpose he has armed a part of his navy, although he is desirous to preserve, with all the Powers at war, not only a good understanding, but all the friendship which the neutrality can admit of. The King will never recede from these principles, unless he is forced to it: he knows the duties and the obligations; he respects them as he does his treaties and desires no other than to maintain them. His Majesty is persuaded, that the belligerent Powers will acknowledge the justice of his motives; that they will be as averse as himself to doing any thing that may oppress the liberties of mankind, and that they will give their orders to their admiralty and to their officers, conformably to the principles above recited, which tend to the general happiness and interest of all Europe.

COPENHAGEN, *July 3, 1780.*

BERNSTORFF

Convention for an Armed Neutrality between Russia and Denmark and Norway, July 9, 1780¹

Whereas the commerce and navigation of neuter Powers is greatly injured by the present war at sea which has broken out between Great Britain, on the one part, and France and Spain, on the other part, Her Majesty the Empress of Russia, and His Majesty the King of Denmark and Norway, in consequence of their assiduous attention to support their own dignity, and to unite their constant care for the safety and welfare of their respective subjects; as well as from the respect which they have at all times manifested for the rights of nations in general, have found it necessary, in the present circumstances, to determine their conduct according to these sentiments.

Her Majesty the Empress of Russia, in her declaration to the belligerent Powers, dated February 28, 1780, has plainly stated, in the face of all Europe, the fundamental principles which derive from

¹Jenkinson's *Treaties*, vol. iii, p. 259. Sweden and the United Provinces acceded to this treaty on July 21, 1780, and January 5, 1781, respectively

the primitive rights of mankind, and which Her said Majesty claims and adopts as a rule of her conduct in the present war. As this attention of Her Imperial Majesty, in watching over the reciprocal rights of nations, has been honored with the approbation of all neutral Powers, Her said Majesty has engaged in this affair, which materially concerns her most essential interests, and has proceeded therein so far that it may be seriously considered as a subject worthy of the attention of both the present and future time, as it tends to the establishment of a permanent and invariable system of the rights, prerogatives, and engagements of neutrality.

His Majesty the King of Denmark and Norway, convinced of the justice of these principles, has likewise established and claimed them in his declaration of the 8th of July, 1780, which declaration (as well as that of the Empress of Russia) His said Majesty has caused to be communicated to the belligerent Powers; and in order to support these principles efficaciously, His Majesty has ordered part of his fleet to be fitted out. From these proceedings have arisen that harmony and unanimity with which Her Majesty the Empress of Russia, and His Majesty the King of Denmark and Norway, have thought necessary in mutual friendship and reciprocal confidence, and in conformity to the interest of their respective subjects, to confirm their common engagements by the conclusion of a formal convention.

To this end Their Imperial and Royal Majesties have chosen and appointed the following plenipotentiaries, viz.: Her Majesty the Empress of Russia has appointed Charles van Osten, commonly called Baron Saken, Privy Counselor of State, Knight of the Order of St. Ann, Minister Plenipotentiary from Her said Majesty to the Court of Denmark, etc., and His Majesty the King of Denmark and Norway has appointed Otton Count of Thott, Privy Counsellor of State, Knight of the Order of the Elephant, etc., Joachim Otton Baron de Schack-Rathlau, Privy Counselor of State, Knight of the Order of the Elephant, etc., John Henry Baron Eichstedt, Privy Counselor of State, Governor of His Royal Highness the Hereditary Prince of Denmark, Knight of the Order of the Elephant, etc., and Andrew Peter Count Bernstorff, Privy Counselor and Minister and Secretary of State for the foreign department, President of the Royal German Chancery, Knight of the Order of the Elephant, etc., which said Ministers, after having exchanged their full powers, which were found to be in due form, have concluded and agreed to the following articles:

ARTICLE 1

That Their aforesaid Majesties are sincerely determined to maintain, constantly, the most perfect friendship and harmony with the different Powers at present engaged in war, and to observe the most scrupulous neutrality; and in consequence thereof they declare, that adhering to this determination, the prohibition of all contraband trade with the Powers at present at war, or with those who may hereafter be engaged therein, shall be strictly observed by their respective subjects.

ARTICLE 2

To avoid all errors and misunderstandings with regard to commodities which shall be deemed contraband, Her Majesty the Empress of Russia, and His Majesty the King of Denmark and Norway, do hereby declare, that they shall only acknowledge such articles to be contraband commodities as are included and mentioned in the treaties now subsisting between their respective Courts and the one or the other of the belligerent Powers.

Her Majesty the Empress of Russia conforms herself entirely in this respect to the Articles 10 and 12 of her treaty of commerce with the Court of Great Britain, and extends likewise the engagements of this treaty, which are founded upon the natural rights of nations, to the Courts of France and Spain; which said Courts, until the date of this present convention, have no treaty of commerce with her empire.

His Majesty the King of Denmark and Norway, on his part, conforms himself chiefly to the 2d article of this treaty of commerce with the Court of Great Britain, and to the Articles 26 and 27 of his treaty of commerce with France, and extends also the engagements of this last-mentioned treaty to the Court of Spain, as His said Majesty has no treaty with the last-mentioned Power, which determines any conditions relative to this subject.

ARTICLE 3

As by these means all contraband goods and commodities are determined and ascertained conformable to the treaties and special convention subsisting between the high contracting Parties and the bel-

ligerent Powers, and chiefly in the treaty between Russia and Great Britain of the 20th of June, 1766, as well as in that between Denmark and Great Britain, dated July 11, 1670, and by that concluded between Denmark and France, on the 23d of August, 1742; the will and intention of Her Majesty the Empress of Russia, and of His Majesty the King of Denmark and Norway are, that all other commerce shall be and remain free.

Their said Majesties having already set forth in their declaration to the belligerent Powers, that they have laid down, as the basis of their conduct, the general principles of the natural rights of mankind, from whence the liberty of commerce and navigation, and the rights of neuter nations derive, are resolved not to depend any longer upon the arbitrary explication of these rights, which is generally dictated by partial advantages and momentary interests; with this view, Their said Majesties have agreed upon the following articles:

(1) That all neutral vessels shall be permitted to navigate from port to port, and on the coasts of the belligerent Powers.

(2) That the effects belonging to subjects of the belligerent Powers shall be free on board neuter ships and vessels, excepting only such articles as are stipulated to be deemed contraband.

(3) In order to determine what is to be considered as a port blocked up, it is hereby declared, that that port shall only be deemed as such into which no ships can enter without being exposed to an evident peril from the forces that attack the said port, and the ships that shall have taken a station near enough for that purpose.

(4) That neuter vessels shall only be liable to be stopped and seized for just and cogent reasons, and upon the most convincing proofs, that justice shall be done unto them without loss of time, and that the proceedings shall always be uniform, speedy, and according to the laws; and that whenever any shall be found to have been stopped, or suffered any damage without any sufficient cause, they shall not only be entitled to a sufficient compensation, but also to a complete satisfaction for the insult offered to the flag of Their Majesties.

ARTICLE 4

In order to obtain this end, and to protect the general commerce of their subjects, founded upon these invariable principles, Her Majesty, the Empress of Russia, and His Majesty, the King of Denmark and

Norway, have resolved to fit out, separately, a proportionate number of ships of the line and frigates; and the squadrons of these respective Powers shall repair to such latitudes, and shall serve as convoys to the trading ships of their respective subjects, wherever the commerce and navigation of each nation shall require it.

ARTICLE 5

In case that any merchant ships belonging to subjects of one of the high contracting Parties should happen to be in a sea or latitude where no ships of war of their sovereign are stationed, and that they consequently could not obtain any protection from the forces of their own nation, the commander of the ships of war of the other Power, upon being duly requested, shall immediately afford them all necessary assistance; and in this case, it is hereby stipulated, that the ships and frigates of the one Power shall always grant the necessary protection and assistance to the trading ships of the other Power; provided always, that those who shall claim such assistance or protection, shall not carry on any illicit trade which may be contrary to the laws of neutrality, as received and mentioned here above.

ARTICLE 6

The present convention shall not be retroactive, and consequently neither of the high contracting Parties can take recognizance of any differences that may have arisen between them and other Powers before its conclusion, unless the matter in litigation shall be relative to violences which are still existing, and which may tend to oppress all neuter nations in Europe.

ARTICLE 7

If, notwithstanding the vigilant and amicable care of the two high contracting Parties, and the most exact observations of neutrality on their part, any Russian or Danish merchant ships should happen to be insulted or taken by the ships of war or privateers of one or the other of the belligerent Powers, the Minister of the offended party shall make proper representations to that Court whose ships of war or privateers have been guilty of the said act; he shall insist upon a reasonable compensation for the damages or loss of time, as well as upon

a complete satisfaction for the insult offered to the flag of his sovereign. The Minister of the other high contracting Party shall second and support these representations in the most serious and efficacious manner, and thus they shall continue jointly and unanimously until their request is granted. But in case of a refusal, or any unreasonable delay from time to time to redress these grievances, their aforesaid Majesties do hereby declare, that they will make use of reprisals towards that Power that refuses to do them justice, and will immediately unite, in the most efficacious means, to execute these just reprisals.

ARTICLE 8

In case that one of the high contracting Parties, or both together, should be disturbed, molested, or attacked, in consequence of this convention, or any subject whatever relative thereto, it is hereby stipulated and agreed, that the two Powers shall immediately act in concert for their mutual and reciprocal defense, and shall employ and unite all their forces to obtain a proper satisfaction, as well for the insult offered to their flag, as for the losses sustained by their respective subjects.

ARTICLE 9

This convention shall be in full force as long as this present war shall last; and the engagements contained therein shall serve as the basis for all future engagements and treaties that may be concluded hereafter, according to circumstances, and in case any other maritime war should hereafter unfortunately disturb the tranquillity of Europe. As to the rest, all that has been stipulated and agreed upon, shall be considered as permanent and invariable, as well with regard to mercantile affairs as for what concerns the navy, and shall have force of law in all decisions upon the rights of neuter nations.

ARTICLE 10

As the end and chief object of this convention is to secure the general liberty of the commerce and navigation, Their Majesties, the Empress of Russia, and the King of Denmark and Norway, do hereby consent, and engage themselves reciprocally, to permit that other neuter Powers may accede thereto; and that these Powers so acceding,

being fully acquainted with the fundamental principles and engagements concerned shall share in the obligations and advantages of the said convention.

ARTICLE 11

And in order that the belligerent Powers may have no pretext for their proceedings, or pretend to be unacquainted with these engagements between Their aforesaid Majesties, the high contracting Powers do hereby promise, that they will separately acquaint the belligerent Powers with the measures they have taken, and the motives which have engaged them to unite in this affair; which measures are the less hostile as they are no ways detrimental to any other Power, but have only for object the security of the commerce and navigation of their respective subjects.

ARTICLE 12

The present convention shall be ratified by the two high contracting Parties, and the ratifications shall be exchanged, in due form, within the term of six weeks from the date hereof, or sooner if possible. In virtue whereof we, whose names are hereunto written, being properly invested with full powers to that effect, have signed and sealed this present convention.

Done at Copenhagen, the 9th of July, 1780.

(L. S.) CHARLES VAN OSTENSAKEN

(L. S.) J. SCHACK RATHLAU

(L. S.) A. P. COUNT OF BERNSTORFF

(L. S.) O. THOTT

(L. S.) H. EICHSTEDT

The ratifications of this convention have been exchanged at Copenhagen, on the 16th of September, 1780; by the same Ministers Plenipotentiaries who have signed the same.

And as a like convention has been concluded at Petersburg, between the Ministers chosen and appointed to that effect, namely, on the part of Her Majesty the Empress of Russia, Count Nikita Panin, Privy Counselor, Minister and Secretary of State, Knight of the Orders of St. Andrew, St. Alexander-Newsky, and St. Ann; and Count J Osterman, Vice Chancellor of Russia, Privy Counselor of State and Knight of the Orders of St. Alexander-Newsky, and St. Ann; and on the part of His Majesty the King of Sweden, Baron Frederick

Van Nolken, Envoy Extraordinary from His Swedish Majesty to the Court of Petersburg, Chamberlain, Commander of the Order of the Polar Star, and Knight of the Orders of the Sword, and St. John, etc., which said convention has been signed at Petersburg by the above-named plenipotentiaries, after the customary exchange of their full powers in due form, on the 21st of July, 1780; and the said convention being word for word of the same tenor and form as that concluded and signed at Copenhagen, excepting only the second article, in which the stipulations concerning the articles that are to be deemed contraband, are determined and ascertained according to the treaties subsisting between the Court of Sweden and other Powers, it has been thought proper to avoid a repetition of what has already been mentioned, to insert here the second article only, word for word the same as it stands in the treaty concluded and signed at Petersburg, July 21, 1780, between Their Majesties the Empress of Russia and the King of Sweden.

ARTICLE 2

To avoid all errors and misunderstandings with regard to commodities which shall be deemed contraband, Her Majesty the Empress of Russia, and His Majesty the King of Sweden, do hereby declare, that they shall only acknowledge such articles to be contraband commodities as are included and mentioned in the treaties now subsisting between their respective Courts, and the one or the other of the beligerent Powers.

Her Majesty the Empress of Russia conforms herself entirely in this respect to the Articles 10 and 11 of her treaty of commerce with the Court of Great Britain, and extends likewise the engagements of this treaty, which are founded upon the natural rights of nations, to the Courts of France and Spain; which said Courts, until the date of the present convention, have no treaty of commerce with her empire.

His Majesty the King of Sweden, for his part, refers chiefly to the 11th article of this treaty of commerce with the Court of Great Britain, and to the tenor of the preliminary treaty of commerce concluded between Sweden and France in the year 1741; and although the articles that are to be deemed contraband are not expressly ascertained and determined in the last-mentioned treaty, the two Powers having understood to consider each other as *Gens amicissima*, the Court of Sweden has, however, reserved to itself the same advan-

tages which the Hanse Towns enjoy in France since times immemorial until the present period. The advantages which are included in the treaty of Utrecht being fully confirmed, the King has nothing to add thereto. With regard to the Court of Spain, His Swedish Majesty finds himself in the same situation as the Empress of Russia, and following Her Majesty's example, the King likewise extends to the Court of Spain all the engagements of the above-mentioned treaties, as being founded upon the natural rights of nations.

In consequence of this difference in the above article, the two Kings who have joined Her Majesty the Empress of Russia, in this affair, have acceded, as principal contracting Parties, to the treaties and conventions, concluded between them and Her said Imperial Majesty, and to this effect they have signed with their own hand a separate act, which said acts have been exchanged in due form at Petersburg by the Ministers of Her Imperial Majesty.

Their High Mightinesses the States-General of the United Provinces, also acceded to the said convention on the 20th of November, 1780, and under the same conditions, for what concerns the articles of contraband, according to the treaties subsisting between their High Mightinesses and other Powers, which said convention has been signed at Petersburg by their plenipotentiaries on the 5th of January, 1781, with the addition of the following:

ARTICLE 13

For what concerns the command in chief of the naval forces, in case the squadrons or ships of war of the two high contracting Parties should happen to meet, or find it expedient to form a junction, it is hereby stipulated and agreed, that the same shall be obeyed as is customary between crowned sovereigns and the Republic of Holland.

Additional Separate Articles to the Convention for an Armed Neutrality between Russia and Denmark of July 8, 1780¹

ARTICLE 1

As Her Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway have always been equally interested

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 195.

in protecting the security and tranquillity of the Baltic Sea, and in keeping it free from the disturbances of the war and privateering—a system the more just and natural since all the Powers whose States border thereon enjoy the most profound peace,—they have mutually agreed to continue to maintain that it is a closed sea, incontestably such by its situation, on which all nations should and may navigate in peace and enjoy all the advantages of perfect tranquillity, and to adopt to this end among themselves measures capable of guaranteeing this sea and its coasts from all hostilities, piracy, and acts of violence. They will also maintain the tranquillity of the North Sea off their coasts, in so far as the circumstances and the interests of their States may render it necessary.

ARTICLE 2

Their said Majesties, desiring nothing more ardently than the restoration of peace based upon equitable principles, sentiments with which the love of humanity and the desire to prevent the further shedding of blood has inspired them since the beginning of the dissensions which now divide Europe, mutually promise to devote themselves to this same object, to consider the means which may accomplish this purpose, and when the opportunity presents itself, to seize it and to cooperate with sentiments of friendship and of confidence in so salutary an endeavor.

ARTICLE 3

Since the situation of the places makes very short the period during which the fleets of Her Imperial Majesty can operate outside of the Baltic for the protection of neutral commerce on the other seas, His Majesty the King of Denmark and Norway engages to receive in his ports and to treat on absolutely the same footing as his own, all Russian ships or vessels that may enter therein to pass the winter, to furnish them from her warehouses with equipment and provisions of all kinds of which the crew may have need at the same prices at which such equipment and provisions are furnished to the vessels of Her Majesty; in a word, to make all necessary arrangements for the proper care of these vessels and their crews.

ARTICLE 4

If it should be found necessary to join the two squadrons, this will be done in accordance with the principles of perfect equality, and

when one or more vessels happen to be together, that one of the commanding officers who has the higher rank, or in case they are both of the same rank, the one who is senior in that rank, shall take command of the war-ships and frigates of both nations. In general, an effort will be made to arrange the cruising, so far as possible without a formal junction, in such a way as to form a kind of chain and to give each other aid in case of need. As to salutes, they shall always be in conformity with the stipulations of the conventions between the two nations.

ARTICLE 5

At the more or less distant time when peace shall have been restored among the belligerent Powers, Her Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway shall use their best efforts with the maritime Powers in general to bring about the universal acceptance and recognition in all naval wars which may arise hereafter of the system of neutrality and the principles established in the present convention, forming the basis of a universal maritime code.

ARTICLE 6

As soon as this convention shall be ratified and the exchange of ratifications shall have been made, the high contracting Parties shall take care to communicate it, with the exception of the separate articles, in good faith and conjointly and with one accord, through their Ministers accredited to foreign Courts, and specifically to those which are at present at war. In order that they may proceed uniformly to this end, there is attached hereto the form of the instrument which the respective Ministers shall transmit on this occasion.

These separate articles shall be considered and regarded as forming a part of the convention itself and shall have the same force and effect as though they were inserted word for word in the said convention concluded on the same day between the high contracting Parties. They shall be ratified in the same manner and ratifications shall be exchanged at the same time.

In faith whereof we, the undersigned, by virtue of our full powers, have signed them and affixed thereto the seals of our arms.

Done at Copenhagen, the 9th day of the month of July, in the year of grace one thousand seven hundred and eighty.

[L. S.] P. C. BERNSTORFF

[L. S.] CHARLES D'OSTEN
called SACKEN.

[L. S.] O. THOTT

[L. S.] O. SCHACK RATHLOW

[L. S.] J. H. EICKSTEDT

In fidem Concordantie

PIERRE DE BACUNIN

Treaty between Great Britain and Denmark, July 21, 1780¹

The two contracting Powers do reciprocally engage, for themselves and their successors, not to assist the enemies of the one or of the other, in time of war, with soldiers, vessels or any kind of goods and merchandise, accounted contraband, as also to prohibit their subjects to do the same, and to punish severely, as infractors of the peace, those, who shall act contrary to prohibitions given to this effect, but that no doubt may be left concerning what is to be understood by the term contraband, it is agreed upon, that by this denomination are only to be understood: fire-arms as well as other kind of weapons and things thereto belonging, as: canons, muskets, mortars, petards, bombs, grenades, light-balls, saucisses, carriages, rests, bandollers, powder, match, saltpetre, bullets, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horses, saddles, holsters, belts, and generally all other implements of war, as well as ship-timber, tar, pitch or rosin, copper in sheets, sails, hemp and cordage, and generally every thing which properly serves for the equipment of ships, excepting however unwrought iron, and fir-planks; but it is expressly stipulated, that fish, and flesh, fresh or salted, wheat, flour, corn or other grain, pulse, oil, wine, and generally all that serves for the nourishment and sustenance of life, are not accounted contraband; so that all these articles may always be sold and transported, like other merchandise, even to places, possessed by an enemy to either of the two Crowns, provided, they are not besieged or blocked up.

¹Hennings: *Sammlung von Staatsschriften*, vol. 2, p. 102..

Declaration of the King of Sweden to the Courts of London, Versailles and Madrid, July 21, 1780¹

Ever since the beginning of the present war, the King has taken particular care to manifest his intentions to all Europe. He imposed unto himself the law of a perfect neutrality; he fulfilled all the duties thereof, with the most scrupulous exactitude; and in consequence thereof, he thought himself entitled to all the prerogatives naturally appertaining to the qualification of a sovereign perfectly neuter. But notwithstanding this, his commercial subjects have been obliged to claim his protection, and His Majesty has found himself under the necessity to grant it to them.

To effect this, the King ordered last year a certain number of men of war to be fitted out. He employed a part thereof on the coasts of his kingdom, and the rest served as convoys for the Swedish merchant ships in the different seas which the commerce of his subjects required them to navigate. He acquainted the several belligerent Powers with these measures and was preparing to continue the same during the course of this year, when other Courts, who had likewise adopted a perfect neutrality, communicated their sentiments unto him, which the King found entirely conformable to his own, and tending to the same object.

The Empress of Russia caused a declaration to be delivered to the Courts of London, Versailles, and Madrid, in which she acquainted them of her resolution to protect the commerce of her subjects, and to defend the universal rights and prerogatives of neutral nations. This declaration was founded upon such just principles of the law of nations and the subsisting treaties that it was impossible to call them into question. The King found them entirely concordant with his own cause, and with the treaty concluded in the year 1666, between Sweden and France; and His Majesty could not forbear to acknowledge and to adopt the same principles, not only with regard to those Powers, with whom the said treaties are in force, but also with regard to such others as are already engaged in the present war, or may be involved therein hereafter, and with whom the king has no treaties to reclaim. It is the universal law, and when there are no particular engagements existing, it becomes obligatory upon all nations.

In consequence thereof, the King declares hereby again, "That he

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 185. See also, *Annual Register*, 1780, p. 353.

will observe the same neutrality, and with the same exactitude, as he has hitherto done. He will enjoin all his subjects, under rigorous pains, not to act in any manner whatever contrary to the duties which a strict neutrality imposes unto them; but he will effectually protect their lawful commerce, by all possible means, whenever they carry on the same, conformably to the principles here above mentioned.

Reply of the Court of London to the Danish Declaration, July 25,
1780¹.

During the whole course of the defensive war which the King has been waging against France and Spain, His Majesty has constantly respected the rights of all friendly and neutral Powers, in accordance with the terms of his different treaties with them and with the clearest and most generally recognized principles of the law of nations, the common law of those nations which have no special conventions.

Such conventions have long existed between Great Britain and Denmark. The flag of His Danish Majesty and the commerce of his subjects have been respected and shall continue so to be, in conformity with the treaties existing between the two nations, which are the foundation and the support of that friendship which has united them for more than a century. Their mutual rights and duties are clearly set forth in these solemn engagements, which would become worthless if they could be changed otherwise than by mutual agreement. They remain in full force at the present time and are equally binding upon both contracting Parties; they constitute an inviolable law for both. The King has followed and will continue to follow it as such with that spirit of equity which has guided all his acts, and with a sincere friendship for the King of Denmark, in the expectation of finding and in the conviction that he will always find in His Danish Majesty similar sentiments and a like conduct.

STORMONT

LONDON, July 25, 1780.

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 182. Presented by Mr. Eden on August 7 of the same year.

Reply of France to the Danish Declaration, July 27, 1780¹

The King's reply to the last declaration of the Empress of Russia made known how well calculated are the principles of His Majesty with regard to the freedom of the seas to bring about security and tranquillity for neutral vessels. By his sincere commendation of the views and measures of the Empress of Russia, His Majesty announced in advance to the Powers which this Princess invited to make common cause with her what they might expect from his justice and his love for the general good.

Since the King of Denmark has now made known his determination to uphold a system, the establishment of which is regarded by His Majesty as the greatest benefit that the present war has been able to bring about for Europe, the King hastens to inform His Danish Majesty of his entire approval of the content of the declaration which this Prince has had transmitted to him. The wise and clear laws, whose execution are demanded by the King of Denmark, are in full accord with the provisions and orders of His Majesty at the very beginning of this war, looking to the safeguarding of neutral vessels from all the injuries, to which, according to the law of nations, they should not be exposed. His Majesty recently issued additional orders to the officers of his navy and to privateers carrying his flag not to disturb in any manner neutral navigation; he did not need any instigation to order that Danish vessels in particular should be treated as belonging to a friendly Power which respected the laws of the sea and should enjoy all the advantages of neutrality. His Majesty hopes that the King of Denmark, pursuant to the principles contained in his declaration, will likewise be good enough to reiterate the order to his subjects to conduct themselves in every respect in conformity with the usages which a wise foresight has established to prevent abuse of freedom of navigation. The more favorable a belligerent Power shows itself to be toward a neutral nation, the more scrupulously should the latter keep within the limits prescribed by the law of nations.

His Danish Majesty, by joining with the Empress of Russia and the other Powers that shall embrace the same cause, will aid in establishing for the future the status of neutral vessels, in order that the calamities that follow in the wake of war may be diminished and that

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 180.

the whole of Europe may no longer be made a victim in quarrels which may arise between one or more of the nations of that continent.

The King desires that His Danish Majesty shall reap the full benefit that he expects from his prudence and requests him to rest assured that no wrong will be perpetrated by his subjects on Danish navigators, or, if such a thing should happen, that reparation shall be made with all possible celerity.

His Majesty expresses his most sincere hope that the cooperation of the Powers, which are equally interested in the freedom of the seas, may render immutable laws whose equity he recognizes authoritatively. He is especially pleased to assure the King of Denmark on this occasion of his never-ending desire that the Danish nation shall enjoy the benefit of the sentiments of friendship and confidence which unite the two Courts.

VERSAILLES, *July 27, 1780.*

**Convention for an Armed Neutrality between Russia and Sweden,
August 1, 1780¹**

ARTICLE 1

Their respective Majesties are fully and sincerely determined to keep upon the most friendly terms with the present belligerent Powers and preserve the most exact neutrality; they solemnly declare their firm intention to be, that their respective subjects shall strictly observe the laws forbidding all contraband trade with the Powers now being, or that may hereafter be, concerned in the present disputes.

ARTICLE 2

To prevent all equivocation or misunderstanding of the word contraband, Their Imperial and Royal Majesties declare that the meaning of the said word is solely restrained to such goods and commodities as are mentioned under that denomination in the treaties subsist-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 189. See also, *Annual Register*, 1781, p. 300.

ing between their said majesties and either of the belligerent Powers. Her Imperial Majesty abiding principally by the 10th and 11th articles of the treaty of commerce with Great Britain; the conditions therein mentioned, which are founded on the right of nations, being understood to extend to the Kings of France and Spain; as there is at present no specific treaty of commerce between the two latter and the former. His Danish Majesty, on his part, regulates his conduct in this particular by the first article of his treaty with England, and the 26th and 27th of that subsisting between His said Majesty and the King of France, extending the provisions made in the latter to the Catholic King; there being no treaty *ad hoc*, between Denmark and Spain.

ARTICLE 3

And whereas by this means the word *contraband*, conformable to the treaties now extant and the stipulations made between the contracting Powers and those that are now at war, is fully explained; especially by the treaty between Russia and England of the 20th of June, 1766; between the latter and Denmark, of the 11th of July, 1670; and between Their Danish and most Christian Majesties, of August 23, 1742; the will and opinion of the high contracting Powers, are, that all other trade whatsoever shall be deemed and remain free and unrestrained.

By the declaration delivered to the belligerent Powers, Their contracting Majesties have already challenged the privileges founded on natural right, whence spring the freedom of trade and navigation; as well as the right of neutral Powers; and being fully determined not to depend in future merely on an arbitrary interpretation, devised to answer some private advantages or concerns, they mutually covenanted as followeth:

(1) That it will be lawful for any ship whatever to sail freely from one port to another, or along the coast of the Powers now at war.

(2) That all merchandise and effects belonging to the subjects of the said belligerent Powers, and shipped on neutral bottoms, shall be entirely free; except contraband goods.

(3) In order to ascertain what constitutes the blockade of any place or port, it is to be understood to be in such predicament, when the assailing Power has taken such a station, as to expose to imminent danger, any ship or ships that would attempt to sail in or out of the said ports.

(4) No neutral ships shall be stopped without a material and well-grounded cause; and in such cases justice shall be done to them without loss of time; and besides indemnifying, each and every time, the party aggrieved, and thus stopped without sufficient cause, full satisfaction shall be given to the high contracting Powers, for the insult offered to their flag.

ARTICLE 4

In order to protect officially the general trade of their respective subjects on the fundamental principles aforesaid, Her Imperial, and His Royal Majesty have thought proper, for effecting such purpose, each respectively to fit out a proportionate rate of ships of war and frigates. The squadron of each of the contracting Powers shall be stationed in a proper latitude, and shall be employed in escorting convoys according to the particular circumstances of the navigators and traders of each nation.

ARTICLE 5

Should any of the merchantmen belonging to the subjects of the contracting Powers, sail in a latitude where shall be no ships of war of their own nation, and thus be deprived of the protection; in such case, the commander of the squadron belonging to the other friendly Power shall, at the request of said merchantmen, grant them sincerely, and *bona fide*, all necessary assistance. The ships of war and frigates, of either of the contracting Powers, shall thus protect and assist the merchantmen of the other: provided nevertheless, that under the sanction of such required assistance and protection, no contraband be carried on, nor any prohibited trade, contrary to the laws of the neutrality.

ARTICLE 6

The present convention can not be supposed to have any relative effect; that is to extend to the differences that may have arisen since its being concluded: unless the controversy should spring from continual vexations which might tend to aggrieve and oppress all the European nations.

ARTICLE 7

If, notwithstanding the cautious and friendly care of the contracting Powers, and their steady adherence to an exact neutrality, the

Russian and Danish merchantmen should happen to be insulted, plundered, or captured by any of the armed ships or privateers belonging to any of the belligerent Powers: in such case the ambassador or envoy of the aggrieved party, to the offending Court, shall claim such ship or ships, insisting on a proper satisfaction, and never neglect to obtain a reparation for the insult offered to the flag of his Court. The minister of the other contracting Power shall at the same time, in the most efficacious and vigorous manner, defend such requisition, which shall be supported by both parties with unanimity. But in case of any refusal, or even delay in redressing the grievances complained of; then Their Majesties will retaliate against the Power that shall thus refuse to do them justice, and immediately agree together on the most proper means of making well-founded reprisals.

ARTICLE 8

In case either of the contracting Powers, or both at the same time, should be in any manner aggrieved or attacked, in consequence of the present convention, or for any reason relating thereto; it is agreed, that both Powers will join, act in concert for their mutual defense, and unite their forces in order to procure to themselves an adequate and perfect satisfaction, both in regard to the insult put upon their respective flags, and the losses suffered by their subjects.

ARTICLE 9

This convention shall remain in force for and during the continuance of the present war; and the obligation enforced thereby, will serve as the ground-work of all treaties that may be set on foot hereafter; according to future occurrences, and on the breaking out of any fresh maritime wars which might unluckily disturb the tranquillity of Europe. Meanwhile all that is hereby agreed upon shall be deemed as binding and permanent, in regard both to mercantile and naval affairs, and shall have the force of law in determining the rights of neutral nations.

ARTICLE 10

The chief aim and principal object of the present convention being to secure the freedom of trade and navigation, the high contracting Powers have antecedently agreed, and do engage to give to all other

neutral Powers free leave to accede to the present treaty, and, after a thorough knowledge of the principles on which it rests, share equally in the obligations and advantages thereof.

ARTICLE 11

In order that the Powers now at war may not be ignorant of the strength and nature of the engagements entered into by the two Courts aforesaid; the high contracting Parties shall give notice, in the most friendly manner, to the belligerent Powers, of the measures by them taken; by which, far from meaning any manner of hostility, or causing any loss or injury to other Powers, their only intention is to protect the trade and navigation of their respective subjects.

ARTICLE 12

This convention shall be ratified by the contracting Powers, and the ratifications interchanged between the Parties in due form, within the space of six weeks, from the day of its being signed, or even sooner, if possible. In witness whereof, and by virtue of the full powers granted us for the purpose, we have put our hands and seals to the present treaty.

Done at Copenhagen, July 21, 1780.

(Signed) CHARLES D'OSTEN (Called SACKEN)
O. THOTT
J. SCHACK RATHLOW
H. EICKSTEDT
A. P. BERNSTORFF

Acceded to, and signed by the plenipotentiaries of the Court of Sweden, at Petersburg, July 21, 1780, and by the States-General accepted November 20, 1780, and signed at Petersburg, January 5, 1781, with the addition only of

ARTICLE 13

If the respective squadrons, or ships of war, should meet or unite, to act in conjunction, the command in chief will be regulated according to what is commonly practised between the crowned heads and the Republic.

Additional Separate Articles to the Convention for an Armed Neutrality between Russia and Sweden of August 1, 1780¹

[These six articles are word for word of the same tenor as those between Russia and Denmark, except that to Article 3 between Russia and Sweden there is added:] Her Imperial Majesty undertakes the same obligations with respect to His Majesty the King of Sweden, and her commanding officers in the ports of the Baltic Sea shall consequently have orders to follow the same procedure in the case of Swedish war-ships and all Swedish vessels, when they are so requested.

**Reply of the Court of London to the Swedish Declaration,
August 3, 1780²**

Throughout the entire course of the war in which Great Britain finds herself engaged as a result of the aggression of France and Spain, the King has invariably followed those principles of justice and equity which guide all his actions. He has faithfully fulfilled all his engagements with respect to friendly and neutral Powers. The flags of these Powers and the commerce of their subjects have been respected in conformity with the terms of these engagements.

Those existing between Great Britain and Sweden are clear and formal and furnish a direct reply to the declaration which Baron de Nolken has transmitted by the express orders of the Court.

The 12th article of the treaty of 1661 fixing the form of certificate with which vessels must be provided gives the following reason therefor:

Ne vero libera ejusmodi navigatio, aut transitus foederati unius, ejusque subditorum ac incolarum, durante bello alterius foederati, terra marive cum aliis gentibus, fraudi sit alteri confoederato, mercesque et bona hostilia occultari possint.

The same article contains a precise and formal stipulation, namely:

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 205.

²Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 188.

Si hostis bona in confoederati navigio reperiantur, quod ad hostem pertinet, praedae solummodo cedat, quod vero ad confoederatum illico restituatur.

The treaty of 1666 prescribes the same certificate and gives the same reasons therefor.

Such are the engagements binding the two nations, which can not be violated without impairing the friendship which has so long existed between them and of which these engagements are the foundation and support.

Treaties can be changed only by mutual agreement of the contracting Parties, and as long as they are in force, they are equally binding upon both.

The King shall, therefore, follow his engagements with Sweden as a sacred and inviolable law, and he shall maintain it as such.

Reply of the Court of France to the Swedish Declaration, August 4, 1780¹

The King has constantly desired that neutral Powers should receive no injury in the war in which His Majesty is engaged. His orders have ensured to the vessels belonging to these Powers enjoyment of all the freedom allowed them by the laws of the sea, and if some individual navigators have had cause for complaint in that they have suffered by act of subjects of His Majesty, they have received prompt and equitable justice.

His Majesty has seen with satisfaction in the declaration transmitted to him in the name of the King of Sweden that the intention of this Prince was to continue to protect the navigation of his subjects against all violence, that His Swedish Majesty had even resolved to take measures in concert with other Courts, and particularly with the Empress of Russia, for the more effectual attainment of this end. The King can only express the hope that the cooperation of His Swedish Majesty with these Powers may bring about the good re-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 186.

sults which they intend, that the sea may be free, in conformity with the law of nations and with treaties, which are recognized as being merely an explanation of that law; that, finally, all nations which are not taking part in the war may not suffer from its evils.

His Majesty has repeated to the officers of his navy and to the privateers that carry his flag, orders in accord with the principles upon which the security and tranquillity of all neutral vessels must rest. With still more reason the subjects of the King of Sweden must be assured that they will suffer no mishap at the hands of the subjects of His Most Christian Majesty, since no Frenchman is ignorant of the alliance and friendship which have long existed between the two Crowns.

Inasmuch as the precautions taken by His Swedish Majesty will keep Swedish navigators within the bounds of the strictest neutrality, this will be a further reason for them to insist upon the execution of the laws of which their Master shows himself to be the zealous protector, laws which the King ardently hopes to see adopted by the unanimous cooperation of all the Powers, so that none may have to suffer from the war if the sovereign takes no part therein, when he shall have conformed to the rules prescribed for the prevention of the abuse of the neutral flag.

VERSAILLES, *August 4, 1780.*

**Reply of the Court of Spain to the Danish Declaration, August 7,
1780¹**

His Catholic Majesty, in the reply which he had made to the declaration that the Express of Russia presented to him through her Minister residing at his Court, in all respects similar to that which by order of the said sovereign was presented to the other belligerent Courts, declared in the most positive terms that his views with regard to the rights of neutral nations in their navigation and commerce were entirely in accord with those of Her Imperial Majesty, and the or-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 183.

ders immediately given to observe with respect to vessels under the Russian flag a course of conduct and a manner of treatment in conformity with the principles which the said Princess declared it to be her desire to follow and uphold, are a proof of the sincerity and the good faith with which the King is acting; and so is the promptness with which he ordered the same provisions in favor of Dutch vessels, as soon as the States-General declared their adhesion to the system of the Court of Russia. Now that the King of Denmark (by a declaration signed by his Minister of State on July 8 last) has formally announced that his principles with respect to the rights and freedom which neutral nations should enjoy in their lawful commerce in time of war are those which the Court of St. Petersburg has adopted and which His Majesty is likewise determined to uphold in favor of the Danish flag and the free navigation of his subjects, His Catholic Majesty does not for a moment hesitate to accept this explanation of His Danish Majesty and to declare that at the very outset he gave orders that the same rules be observed with regard to Danish vessels as with Russian and Dutch ships. Consequently the said vessels shall not be arrested by the commanders of his royal fleets, nor by the captains of privateers that may encounter them at sea, although they may have on board effects belonging to the enemies of Spain, provided they be not such effects as have been declared by general treaties contraband in time of war, and these vessels shall be shown every possible consideration in the matter of the notification and observance of the declaration of March 13 of the present year, pertaining to the blockade of Gibraltar, of which Denmark was notified, it being understood that those attempting to sail to that port shall be exposed to the peril set forth in Article 4 of the said declaration. But the Catholic King, in following this line of action, can not doubt that Denmark and the other Powers that have determined or shall determine to uphold their rights and to defend the freedom of their flags shall be likewise impartial in appraising and in responding in kind to the conduct adopted toward them by the Powers at war, as they are obliged to do by their own system and the just maxims which have been so openly adopted.

ST. ILDEPHONSO, *August 7, 1780.*

(Signed) COUNT DE FLORIDA-BLANCA

Declaration of September 7, 1780, by which His Danish Majesty accedes to the Convention of August 1, 1780, between Russia and Sweden¹

Christian VII, by the grace of God, King of Denmark, Norway, the Vandals and the Goths, Duke of Schleswig-Holstein, Stomarn, Ditmarsen and Oldenburg, etc., etc., make known that, having been invited to accede as a principal contracting party to the convention concluded and ratified on July 21/August 1, 1780, at St. Petersburg, between Her Majesty the Empress of all the Russias and His Majesty the King of Sweden, similar in all respects to the convention concluded between us and Her said Imperial Majesty, and signed at Copenhagen on July 9, 1780. We formally certify by this declaration that, having equally at heart the maintenance of the general freedom of neutral commerce and navigation, and being animated in this respect by the same sentiments as Their said Majesties, we accede in all due form as a contracting party to the aforesaid convention, and we bind ourself and our successors by all the stipulations contained in its clauses and articles, as well as in the six separate articles thereto annexed, and we likewise accede entirely to the form and tenor thereof. We understand that Her Majesty the Empress of all the Russias and His Majesty the King of Sweden will likewise declare by a formal instrument the receipt and acceptance of this our declaration and will recognize us as a principal contracting party with respect to the said convention; and as His Majesty the King of Sweden, having been invited likewise, has also acceded in the same manner and in the same sense to the exactly similar convention concluded between us and Her Majesty the Empress of all the Russias, and signed at Copenhagen on July 9, 1780. We solemnly declare that we accept his accession and that we recognize His Swedish Majesty as a principal contracting party of that convention and of the six separate articles thereto annexed. In faith of which we have signed the present act of accession and of acceptance with our own hand and have thereto affixed the great seal of our Crown.

Done and given at our Castle of Fredensburg, this 7th day of the month of July [September?], in the year of grace one thousand seven hundred and eighty, and of our reign the fifteenth.

CHRISTIAN R.

A. V. BERNSTORFF

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 207.

Declaration of September 9, 1780, by which His Majesty the King of Sweden accedes to the Convention of July 9, 1780, between Russia and Denmark¹

Gustavus, by the grace of God, King of Sweden, of the Goths and the Vandals, etc., etc., etc., heir to Norway, Duke of Schleswig-Holstein, of Stormaria and of Ditmarsen, Count of Oldenburg and of Delmenhorst, etc., etc., make known that, having been invited to accede, as a principal contracting party, to the convention concluded and ratified on July 9 of the present year at Copenhagen, between Her Imperial Majesty of all the Russias and His Majesty the King of Denmark, in all respects similar to the convention concluded between Her said Imperial Majesty, signed at Petersburg on July 21/ August 1 of the present year and ratified by us on the 9th of September following, we formally certify by this present declaration that, having equally at heart the maintenance of the general freedom of neutral commerce and navigation, and being animated in this respect by the same sentiments as Their said Majesties, we accede in all due form, as a principal contracting party, to the said convention; and we bind ourself and our successors by all the stipulations contained in the clauses and separate articles thereto annexed, and we likewise accede entirely to the form and tenor thereof. We understand that Her Imperial Majesty of all the Russias and His Majesty the King of Denmark will likewise declare, by a formal instrument, that they have received and accepted this our declaration and will recognize us as a principal contracting party with regard to the said convention; and as His Majesty the King of Denmark, having been invited likewise, has also acceded in the same manner and in the same sense to the exactly similar convention concluded between us and Her Majesty the Empress of all the Russias, and signed at St. Petersburg on July 21/ August 1 of the present year, we solemnly declare that we accept his accession and that we recognize His Danish Majesty as a principal contracting party of that convention and of six separate articles thereto annexed. In faith whereof we have signed this present act of accession with our own hand and have affixed thereto our Royal seal.

Done and given at Spa, September 9, 1780.

GUSTAVUS

U. G. FRANC

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 205.

Resolution of the Continental Congress of the United States regarding Accession to the Principles contained in the Declaration of the Empress of Russia, October 5, 1780¹

Congress took into consideration the report of the committee on the motion relating to the propositions of the Empress of Russia; and thereupon came to the following resolutions:

Her Imperial Majesty of all the Russias, attentive to the freedom of commerce, and the rights of nations, in her declaration to the belligerent and neutral Powers, having proposed regulations, founded upon principles of justice, equity, and moderation, of which Their Most Christian and Catholic Majesties and most of the neutral maritime Powers of Europe, have declared their approbation;

Congress, willing to testify their regard to the rights of commerce, and their respect for the sovereign, who hath proposed and the Powers that have approved the said regulations:

Resolved, That the Board of Admiralty prepare and report instructions for the commanders of armed vessels commissioned by the United States, conformable to the principles contained in the declaration of the Empress of all the Russias, on the rights of neutral vessels:

That the Ministers Plenipotentiary from the United States, if invited thereto, be and hereby are respectively empowered to accede to such regulations, conformable to the spirit of the said declaration, as may be agreed upon by the Congress expected to assemble in pursuance of the invitation of Her Imperial Majesty.

Ordered, That copies of the above resolutions be transmitted to the respective Ministers of the United States, at foreign Courts, and to the honourable the Minister Plenipotentiary of France.

¹*Journals of the Continental Congress* (Washington, 1910), vol. 18, p. 905; Wharton, *Diplomatic Correspondence of the American Revolution*, vol. 4, p. 80.

Memorandum of the Court of Russia presented to the Courts of the Belligerent Powers to notify them of the Accession of Denmark and Sweden to the System of Armed Neutrality, November 7, 1780¹

The undersigned, Envoy, etc., has received instructions from his Court to communicate to the Court of a convention drawn up and signed at St. Petersburg on June 28/July 9 between Her Imperial Majesty of all the Russias, his sovereign, and His Majesty the King of Denmark and Norway, July 21/August 1 between Her Imperial Majesty and His Majesty the King of Sweden, which has for its sole and only object the maintenance of the rights and liberties belonging to every neutral nation. Anxious to perform his duty, he requests the Minister of His Majesty kindly to bring it to the knowledge of the King. His Majesty will find in all the clauses and articles of this treaty an expression of the principles of perfect impartiality and neutrality, as well as of the sentiments of justice and equity which constantly guide the Empress, his sovereign, and which have decided her to adopt measures calculated to protect her subjects from the losses, vexations, and dangers, to which they, their commerce and their navigation might be exposed as the unfortunate result of the naval war which is disturbing the tranquillity of Europe.

The Empress is pleased to believe from the friendship and the spirit of justice with which His Majesty is animated that he will recognize the equity and peaceful intent of this convention, and that he will ensure the execution of the orders which he has had sent to all his officers and commanders of his war-ships, as well as to his ship-owners, to respect the rights and liberties of neutral nations, just as Her Imperial Majesty has provided measures to prevent her subjects from engaging in illicit commerce to the detriment of either of the Powers at war.

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 208.

**Resolution of the States-General of the Netherlands regarding
Their Accession to the System of Armed Neutrality, November
20, 1780¹**

Consideration having been given to a communication from Messrs. van Waffenaar and van Heeckeren, Ministers Plenipotentiary of the States-General of the Netherlands to the Court of Russia, written at St. Petersburg on September 15, last, and received here on October 2, following, giving an account of their conference with Count Panin and Vice Chancellor Count van Osterman upon the subject of their commission, and accompanied by a copy of a convention and some separate articles, together with a draft of the accession in the form in which the States-General shall sign it, all of which is referred to at length in the above-mentioned communication and in the report of October 2 last:

It stands approved and agreed that the States-General's Ministers Plenipotentiary at the Court of St. Petersburg shall be directed and authorized, and by this resolution they are authorized, in the name of the States-General of the Netherlands to accede to the twofold convention of that Court with their Majesties the Kings of Sweden and of Denmark, concluded on July 9 and July 21 at Copenhagen and St. Petersburg respectively, and to accept, on the part of the States-General of the Netherlands, the separate articles thereof and the obligations therein stated, for the enjoyment of the advantage thereby contracted, as if the conventions had been entered into and concluded, word for word, between the States-General of the Netherlands and each of the contracting Powers as principal contracting Parties, with reasons established this day in the declarations of the States-General addressed to the belligerent Powers; and within six weeks of the date of this resolution of the States-General, to conform fully to and solemnly to accept that which Her Imperial Russian Majesty and the Kings of Sweden and Denmark have stipulated in their declarations to the belligerent Powers, and with regard to contraband merchandise, to conform to that which has been stipulated in the treaties concluded between the States-General and the belligerent Powers, and more especially in Article 6 of their maritime treaty with Spain of December 17, 1650, in Article 3 of their maritime treaty with Great Britain of December 1, 1674, and Article 16 of the commercial

¹Translation. Dutch text at Martens, *Recueil de Traités*, vol. 7.

naval and maritime treaty with France, of December 21, 1739, concluded for the period of twenty-five years. The States-General consider the disposition and the determination of contraband merchandise given thereby as perfectly founded upon the law of nations and accept them unreservedly; and they confer the further authorization upon the above-mentioned Ministers Plenipotentiary to draft for Her Imperial Russian Majesty and Their Royal Majesties, acts regarding the above-mentioned accession and acceptance, embodying in the most friendly tone the fullest obligations, and to transmit the said acts to the above-mentioned Courts, with the request that the necessary acts of acceptance of the above-mentioned accession on the part of the States-General be delivered to them in turn.

In consequence of the above-mentioned resolution regarding accession to the above-mentioned convention it is further resolved that within the above-mentioned period of six weeks from the date of this resolution of the States-General, declarations as adopted by the above-mentioned Courts, conformable to the style of those of Her Imperial Russian Majesty and of Their Royal Majesties of Sweden and of Denmark regarding the protection which the States-General intend to extend to the commerce and navigation of their citizens, shall be sent to the Courts of Great Britain, France and Spain. These declarations shall define the character of contraband merchandise and repeat the principles construed in the declaration of Her Imperial Russian Majesty and accepted by the States-General. The necessary orders shall be sent to Mr. Lestevenon van Berkenrode, the States-General's Ambassador at the Court of France, and to Counts van Welderen and van Rechteren, Envoys Extraordinary and Plenipotentiary at the Courts of Great Britain and of Spain respectively, informing them at once of the time when the above-mentioned declaration shall be communicated to each of the belligerent Powers. A copy of the declaration itself shall be sent to the above-mentioned Ministers Plenipotentiary, to acquaint Her Imperial Russian Majesty's Ministry thereof; a copy of the declaration shall be left with the said Ministry, and other copies sent to Messrs. van Lynden and Bosc de la Calmette, the States-General's Envoys Extraordinary at the Courts of Sweden and Denmark; other copies still shall be sent to Mr. Smissart, the States-General's Minister at the Court of Portugal, and to Mr. van Heiden, the States-General's Envoy Extraordinary and Plenipotentiary at the Court of Prussia, the former being

rendered necessary to perfect accession to the above-mentioned convention, and the latter having informed the Ministry of Russia of acceding to the convention in that manner, so that both may make communication to that effect to the Courts whereto they are accredited; and, lastly, copies of the treaty of commerce with Spain in 1650 and with France in 1739 shall, as expressly requested by them, be sent to the Ministers Plenipotentiary at Petersburg.

The honorable deputies of the Provinces of Gelderland, Utrecht, Vriesland, Overijssel, of the town of Groningen and rural Ommelanden have accepted the resolutions of the States-General, their superiors, introduced from time to time upon this subject, and those of Holland and West Vriesland, that of the States-General, their superiors, with regard to the time of notifying the declaration to the belligerent Powers.

The honorable deputy of the province of Zealand who was present declared that as the members had knowledge of the fact that the resolution of the States-General, his superior, of the third of this month, here introduced, was against the sentiment of the majority of the other provinces, he had hoped that the said members would be willing to postpone adopting a conclusion, believing that, according to the union, no conclusion could be reached by a majority for the making of conventions, alliances or treaties. But the other provinces having proceeded to a conclusion, he had accepted, under protest, the consequences which might result, leaving them to the responsibility of the other provinces.

Reply of France, December 12, 1780, to the Notification from Her Majesty the Empress of Russia of the Accession of Denmark and Sweden to the System of Armed Neutrality¹

The King feels highly flattered by the confidence with which the Empress of all the Russias communicates to him the convention signed at Copenhagen on July 9 last between Her Imperial Majesty and

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 209.

the King of Denmark, and at St. Petersburg on July 21/August 1 last between Her said Imperial Majesty and the King of Sweden.

His Majesty has recognized with pleasure that this convention contains the most appropriate measure to ensure the freedom of the seas and the immunity of the flag of neutral Powers. The declarations of His Majesty in this respect, both to Her Majesty the Empress of all the Russias and to Their Danish and Swedish Majesties; the order that he has given to the officers of his fleet and to all his privateers; and the care that he is taking to ensure their execution must convince Her Imperial Majesty that the object of the said convention will be entirely fulfilled by all captains flying the French flag. His Majesty has had many opportunities during the past three years to make known to his subjects and to Europe that the happiness and prosperity of neutral nations, and of the Russian nation in particular, have entered in no small measure in the calculations of his policy and in his military projects. He hopes that his efforts and his example will help to strengthen the system which has brought into being and is extending from day to day the association of neutral Powers. His hopes will be fulfilled if there results from this system a diminution of the evils of war and the assurance that princes and peoples who observe a strict neutrality shall never suffer injury from war.

VERSAILLES, *December 12, 1780.*

DE VERGENNES

Act of January 4, 1781, by which the States-General of the Netherlands Accede to the Conventions for an Armed Neutrality concluded July 9 and August 1, 1780, between Russia and Denmark, and Russia and Sweden¹

The solicitude of Her Imperial Majesty of all the Russias for the maintenance of the interests and the rights of her subjects having led her to give solid and permanent stability to a just and reasonable system of neutrality at sea, and to contract to this end a formal agreement with His Majesty the King of Denmark and of Norway, which was

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 215.

followed immediately by a similar one with His Majesty the King of Sweden, has animated Their High Mightinesses the Lords States-General of the United Provinces to accept the invitation of Her Imperial Majesty and to adopt principles in conformity with those set forth in her declaration and in those of the aforesaid Powers. To this end they have determined, not only to manifest in a formal declaration, which was recently transmitted to the Powers now at war, their point of view, similar to that of the Empress and the two Kings, her Allies, but also to take part directly and effectively, as principal contracting Parties, in the stipulations contracted among them for the protection of the innocent navigation of their respective subjects.

As a result of this determination of Their High Mightinesses, and by virtue of Article 10 of the double maritime convention of Copenhagen and of St. Petersburg, in which it is stated:

The chief aim and principal object of the present convention being to secure the freedom of trade and navigation, the high contracting Powers have antecedently agreed, and do engage to give to all other neutral Powers free leave to accede to the present treaty, and, after a thorough knowledge of the principles on which it rests, share equally in the obligations and advantages thereof.

Her Imperial Majesty of all the Russias, in concert with Their Majesties the Kings, her Allies, had even less hesitation in entering into negotiations with Their High Mightinesses, both in her own behalf and in behalf of her two Allies, whose desires and views had been entrusted to her, since Their High Mightinesses saw fit to send to her, for this purpose, an embassy extraordinary, instructed to make known in their name how agreeable to them was the invitation of the Empress, and to form the proposed union between the Crowns of the North and the United Provinces.

To accomplish this desired and salutary object, Her Imperial Majesty has appointed as her plenipotentiaries, Nikita Count Panin, her Privy Councilor, Senator, Chamberlain, and Chevalier of the Orders of St. Andrew, St. Alexander Newsky, and St. Anne, John Count d'Ostermann, her Vice Chancellor, Privy Councilor, and Chevalier of the Orders of St. Alexander Newsky and St. Anne, John Count d'Ostermann, her Vice Chancellor, Privy Councilor, and Chevalier of the Orders of St. Alexander Newsky and St. Anne, Alexander de Bezborodko, Major General of her Armies, and Colonel commanding

the Kiovia Regiment of Militia of Little Russia, and Pierre de Bacounin, her Councilor of State, member of the Department of Foreign Affairs, and Chevalier of the Order of St. Anne; Their High Mightinesses having charged with their full powers William Louis Baron de Wessenaer, Lord of Starrenburg, of the Body of Nobles of the Province of Holland and of Westfrieze, Steward of Rhymland, ordinary Deputy of the said Province in the Assembly of the States-General, and Ambassador Extraordinary and Plenipotentiary of Their High Mightinesses to the Imperial Court of Russia; Theodore John Baron de Heeckeren, Lord of Brantzenburg, ordinary Deputy in the Assembly of the States-General, representing the First Order of the Province of Utrecht, and their Ambassador Extraordinary and Plenipotentiary at the Imperial Court of Russia; and John Isaac de Swaart, Resident of Their High Mightinesses at the same Court; who, after having exchanged their full powers, found to be in good and due form, have decided and concluded that the entire twelve articles of the two conventions of the same content concluded at Copenhagen on June 28/July 9, 1780, between Her Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway, and at St. Petersburg on July 21/August 1, 1780, between Her Imperial Majesty * * * ¹ their clauses and obligations, with the exception of the changes therein, resulting from the nature of the different treaties and engagements existing between the high contracting Parties and either of the Powers now at war, as set forth in Articles 2 and 3 of the double maritime convention of Copenhagen and of St. Petersburg, above indicated, must be regarded as if they had been made, concluded and established, word for word between Her Imperial Majesty of all the Russias and Their High Mightinesses, as principal contracting Parties, with the express reservations that the said Articles 2 and 3 of the aforesaid conventions be particularly adapted to the former engagements of Their High Mightinesses with regard to merchandise and contraband. With respect to such merchandise they declare it to be their desire to hold strictly to the stipulations of the treaties concluded between themselves and the belligerent Powers, and specifically in the sixth article of the marine treaty with the Crown of Spain, of December 17, 1650, the third article of their Treaty with the Crown of Great Britain, of December 1, 1674, and the sixteenth

¹Apparent omission.

article of their Treaty of commerce, navigation and marine with the Crown of France, concluded on December 21, 1739, for the period of twenty-five years, whose provisions and specifications on the subject of contraband Their High Mightinesses extend indefinitely, as being founded on the law of nature and of nations.

In order to prevent any inaccuracy, the plenipotentiaries of Her Imperial Majesty shall hand to those of Their High Mightinesses certified copies of the two conventions of Copenhagen and of St. Petersburg, which shall be regarded as having been inserted word for word in the present act.

Ratifications of this act of accession, concluded between Her Imperial Majesty of all the Russias, and Their High Mightinesses of the States-General, shall be furnished and exchanged here in St. Petersburg within the period of two months, or sooner if possible.¹ It has likewise been agreed that on the occasion of this exchange of ratifications, Their High Mightinesses shall have transmitted two uniform declarations, for Their Majesties the two Kings allied with the Empress, in the form hereto annexed,² which, through the intermediary of the Minister of Russia are to be exchanged for those of Their aforesaid Majesties, in virtue of which these two Sovereigns and the Lords States-General accept forthwith among themselves the mutual stipulations hereinbefore set forth.

In faith whereof we the undersigned, by virtue of our full powers, have signed and affixed hereto the seals of our arms.

Done at St. Petersburg, December 24, 1780.³

[L. S.] COUNT DE PANIN

[L. S.] COUNT J. D'OSTERMANN

[L. S.] ALEXANDER DE BEZBORODKO

[L. S.] PIERRE DE BACOUNIN

[L. S.] B. DE WASSENAER

[L. S.] B. DE HEEKEREN

[L. S.] J. J. DE SWAART

¹Ratifications of this act were exchanged at St. Petersburg on February 12, 1781, by the same plenipotentiaries who signed it.

²Not printed.

³January 4. 1781, new style.

Separate Act of January 4, 1781, of Accession of the Netherlands to the Conventions for an Armed Neutrality concluded July 9 and August 1, 1780, between Russia and Denmark, and Russia and Sweden¹

The six separate articles forming a part of the double convention of Copenhagen and of St. Petersburg, with the exception of the first article, which contains a special arrangement between the Empire of Russia and the two Crowns of Denmark and of Sweden with regard to the tranquillity of the Baltic Sea, must be considered and regarded as though they had been inserted word for word in the act of accession of Their High Mightinesses to the double convention of Copenhagen and of St. Petersburg, signed here in St. Petersburg this same day. To elucidate and to explain the fourth of these separate articles relating to a provisional arrangement between the two high contracting Powers in the event of the joining of their squadrons, it has been agreed with regard to the authority of the commanding officer, to follow the etiquette generally accepted between Crowned Heads and the Republic.

In faith whereof, we the undersigned, by virtue of our full powers, have signed and affixed hereto the seal of our arms.

Done at St. Petersburg, December 24, 1780.²

[L. S.] COUNT PANIN
[L. S.] COUNT JOHN D'OSTERMANN
[L. S.] ALEXANDER DE BESBORODKO
[L. S.] PIERRE DE BACOUNIN
[L. S.] B. WASSENAER
[L. S.] B. VAN HEECKEREN
[L. S.] J. J. SWAART

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 219.

²January 4, 1781, new style.

**Declaration of the States-General of the Netherlands relative to
Their Accession to the Conventions for an Armed Neutrality
between Russia and Denmark, and Russia and Sweden, Janu-
ary, 1781¹**

We make known that, having been invited to accede, as principal contracting Parties, to the double convention concluded at Copenhagen on June 28/July 9 between Her Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway, and at St. Petersburg on July 21/August 1, 1780, between Her Imperial Majesty of all the Russias and His Majesty the King of Sweden, we formally certify by this present declaration that, having equally at heart the maintenance of the general freedom of neutral commerce and navigation, and being animated in this respect by the same sentiments as Their said Majesties, we accede in all due form, as a principal contracting Party, to the aforesaid double convention, and we bind ourselves in conformity with what has been more fully stated in the act of accession and the separate act signed on December 24, 1780, at St. Petersburg by the plenipotentiaries of Her Imperial Majesty and by those who have been authorized by us, by all the stipulations, clauses, and articles, to which we accede entirely in their form and tenor.

We understand that Her Imperial Majesty of all the Russias and Their Majesties the Kings of Denmark and of Sweden will declare likewise by a formal act that they have received and accepted this our declaration, and that Their Imperial and Royal Majesties will recognize us as a principal contracting Party to the double convention of Copenhagen and of St. Petersburg.

In faith whereof this present declaration, which shall be exchanged at St. Petersburg for a similar acceptance on the part of His Majesty the King of Denmark and Norway [Sweden] through the intermediary of Russia, has been given at The Hague, under the Great Seal of our States and initialed by the President of the Assembly and signed by our Clerk.

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 220.

Declaration of the States-General of the Netherlands to the Courts of the Belligerent Powers, to notify Them of Their Accession to the Conventions for an Armed Neutrality between Russia, and Denmark, and Russia and Sweden, January, 1781¹

Article 10 of the double Convention of Copenhagen and of St. Petersburg having been communicated to the Court of London (*Versailles, Madrid*), announcing the consent of the high contracting Parties to the accession of other neutral Powers; Their High Mightinesses the Lords States-General of the United Provinces have determined to form, in concert with Her Imperial Majesty of all the Russias and Their Majesties the two Kings, her allies, a union founded on a just and reasonable system of neutrality on the sea, having for its object the maintenance of the interests and the rights of their subjects. To this end they have acceded as principal contracting Parties, by a formal act signed at St. Petersburg on December 24, 1780, to the conventions of Copenhagen and of St. Petersburg, concluded on June 28/July 9 and July 21/August 1, 1780, between Her Imperial Majesty of all the Russias and Their Majesties the Kings of Denmark and of Sweden.

The undersigned Ambassador (*Envoy*) having the honor to communicate this act to the Minister of His Britannic (*Most Christian, Catholic*) Majesty requests him to be good enough to bring it to the knowledge of the King his master. His Majesty will find therein a renewed expression of the principles of impartiality, which Their High Mightinesses have constantly professed and which are so in accord with the sentiments of justice and equity which have decided them to adopt the only means calculated to protect their subjects from the losses, vexations and dangers, to which they, their commerce, and their navigation might be exposed as an unhappy consequence of the naval war which is disturbing the tranquillity of Europe.

Their High Mightinesses are pleased to believe, because of the friendship and spirit of justice with which His Britannic (*Most Christian, Catholic*) Majesty is animated, that he will recognize the equity and peaceful intention of such a measure and that he will see to the execution of the orders which he has had issued to all the officers and commanders of his war-ships, as well as to his private ship-owners, to respect the rights and liberties of neutral nations, just as Their High

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 221.

Mightinesses have provided that the subjects of the Republic shall not engage in illicit commerce to the detriment of any of the Powers at war.

Extract from the Register of Resolutions of the States-General of the Netherlands, regarding the System of Armed Neutrality, January 12, 1781¹

VENERIS, *January 12, 1781.*

Upon the proposition of the honorable deputies of the Provinces of Holland and of West Vriesland, and upon the special order of the States-General of the said Provinces in their Assembly, after due deliberation it has been determined and agreed upon, that to the Ministers Plenipotentiary of the States-General at Petersburg, as well as to the Envoys and Ministers von Lynden, Bosc de la Calmette, at the Courts of Stockholm and Copenhagen, instructions shall be sent, **there** and as they may deem most convenient, to make substantial notification to the effect that the States-General by resolution of November 20, last, whereof they were notified in due time, joined the alliance for the maintenance of the rights of neutrality so worthily established by Her Imperial Russian Majesty, and trust that the alliance is thereby perfected, and that therefore, the convention between the Ministers of the Imperial Russian Majesty, and Their Majesties the Kings, to whose Courts each of them is accredited, and the Ministers of the States-General sent in special mission to Petersburg for that purpose, is concluded and signed, and that the ratifications of the conventional Powers will not fail, but be speedily executed; that at least there will be no difficulty encountered to fulfil the engagements made with the Ministers Plenipotentiary of the States-General; that from the moment when the State should have delivered its declaration to the belligerent Powers, the State should be regarded as having joined the convention, and therefore, from that moment share its advantages, if any untoward event should arise between the time of the declaration and the conclusion of the convention.

¹Translation. Dutch text at Martens, *Recueil de Traités*, vol. 3, p. 223.

That their States-General depend upon, and have perfect faith in the power, generosity, and loyalty of Her Imperial Russian Majesty and of Their Royal Majesties and other high allies, for the fulfilment of their engagements and vindication of their own honor, for the execution of the enterprise so worthily undertaken by them to strengthen and safeguard the neutral nations of Europe against the attacks of the belligerent Powers, and persevering in that trust have not hesitated in overcoming their scruples as to the possible results consequent upon the accession to the alliance concluded between the high Powers; and aware of the results which the forwarding of the declaration to the belligerent Powers demanded in the premises might have for the Republic, the States-General have not hesitated to resolve in effect to join the alliance and to forward the declaration, the sending of the copies of the declarations of the States-General to the belligerent Powers having been notified by their Ministers to Her Imperial Russian Majesty and to Their Royal Majesties.

The results have fully justified the exact expectations of the States-General, for His Majesty of Great Britain was greatly displeased with the act of the States-General, and from the moment that His Majesty of Great Britain was informed that the resolution to join the armed neutrality was on the point of being adopted by the States-General, His Majesty of Great Britain did not hesitate to address the Republic in a most unusual way, and, without giving it the necessary time for deliberation required by the form of government and constitution of our provinces—of which fact His Majesty of Great Britain must have had knowledge.—His Majesty demanded immediate satisfaction and punishment for a pretended offense anent a certain disclosed act with North America, and without in any way asking for a provisional answer and expression of disavowal, without criticism of the act, and without asking for an opinion from the Department of Justice of the Provinces of Holland and of West Friesland which were concerned in the matter regarding the law of the country and the reasons which might or might not be adduced, so that in the case, the accused persons could be lawfully prosecuted, without which, neither in the realm of Great Britain, nor in the Republic, nor in any well regulated government, any one can be prosecuted, His Majesty, who could thus have received satisfaction or could at least have stayed the threatened measures, decided to obtain independent satisfaction, attacked the Republic unawares, and hastened the offensive measures

which it pleased His Majesty to take against the Republic. And when Count von Wolderen on the part of the States-General came to hand Lord Starmont the said declaration respecting the right of neutrality the latter almost refused to accept it, saying that he could no longer receive him as the Envoy of the Republic because the manifesto which he had sent him, now that the Republic was being regarded as an enemy, had meanwhile been sent to Count von Wolderen one hour earlier than the hour appointed the day before by Lord Starmont upon the repeated request for an interview made by Count von Wolderen on the same day.

The States-General trust that, although the manifesto of His Majesty of Great Britain, by which His Majesty makes known his intention of regarding the Republic as an enemy, does not refer to the alliance for an armed neutrality, yet the entire action of the Ministry of His Great Britannic Majesty, and the time when and the manner in which the said manifesto was issued, show sufficiently that the hatred toward or for the alliance to which the States-General recently acceded is the prime reason for the explosion of the displeasure of His Great Britannic Majesty toward the Republic, and the consequences thereof are the capture of a very large number of ships belonging to its citizens and of national war-ships, even as in a publicly declared war.

When carefully examined, the manifesto, of which Her Imperial Russian Majesty and Their Royal Majesties have been informed by His Great Britannic Majesty and of which copies will be sent to the Ministers Plenipotentiary and Envoys for their information, bears evidence of hatred on account of the alliance of the Republic with Her Imperial Russian Majesty and Their Royal Majesties, though an effort has been made to conceal the fact with diplomatic rhetoric, and shows in so far as the Republic is impugned for offenses which shall justify the State in resorting to hostile attack, that the same has accepted the neutrality without considering that Her Imperial Russian Majesty and Their Royal Majesties are thereby assailed at the same time, that is, the Powers mediating between Great Britain and the Republic, to whom the treaties have been communicated and are known by them, can not be judged for having contracted a neutrality alliance with a Power which they judge not to be lawfully neutral; furthermore, it was known before that the Court of Great Britain means to derive its pretended right to renounce its treaty of 1674 with

the Republic, and thus to seize its ships destined for one of the belligerent Powers, together with their belongings, from the pretended contradiction of the neutrality of the Republic with its engagements.

The same reason for His Great Britannic Majesty's action toward the Republic: hatred for its accession to the above-mentioned alliance, can also be seen clearly in the manifesto itself, in so far as the latter impugns the Republic for facilitating the departure of ammunition ships to France through the revocation of domestic laws. While there is no need to demonstrate the self-evident truth that up to the present no laws have been thus revoked by the Republic to facilitate such transportation, the accusation again shows that the stumbling block is found in the right of neutrality which permits the transportation by ship of ammunition to the belligerent Powers; and upon this right rests the alliance between her Imperial Russian Majesty, Their Royal Majesties and the States-General of the Netherlands, the which has been evidenced and affirmed as lawful and notified by declarations to the belligerent Powers, and from which arose the hatred toward the alliance.

At present the States-General has no intention further to discuss the said manifesto or to make answer to the same, confident that Her Imperial Russian Majesty and Their Royal Majesties are well able to appreciate it, and that their Ministers and Envoys are sufficiently familiar with both the treaties and the acts of the States-General so as to enable them to disprove by strong verbal argumentation the reasons specified in the manifesto and to establish convincingly that from the outset of the difficulties—even by restricting the commerce of its inhabitants in its own colony, and by holding one of its governors in the West Indies responsible because of complaint lodged against him,—the States-General has shown its unwillingness to do anything to the advantage of the colonies in America and that it has constantly upheld that principle; it is therefore evident and clear that His Great Britannic Majesty's displeasure toward the Republic and the consequences thereof are to be found in the effects of the hatred for the above-mentioned alliance, and on that account finds justification for insisting upon the true meaning of Articles 7, 8 and 9 of the alliance with Her Imperial Russian Majesty and Their Royal Majesties; that the States-General—though it had reason to feel aggrieved because of a single act which upon the intervention of the allies was repaired,—before resorting to armed force had asked the allies to afford it help

for reparation thereof, but that the States-General having been attacked in hostile manner by His Great Britannic Majesty, because of and out of hatred for the convention with Her Imperial Russian Majesty and Their Royal Majesties, and not being in direct relations with His Majesty, has been compelled to defend itself and to resist the attack in the same manner as it had been attacked and to meet hostilities with hostilities,—believes, if ever it had reason so to believe, that it may expect that the allied Powers will be pleased to make an actual and common cause with it and to secure for it full satisfaction, and that the allied Powers will be pleased to assume such further obligations as may be required by the circumstances; the States-General requests this most earnestly and expects this help with all the more confidence, because it feels quite certain that Her Imperial Russian Majesty and Their Royal Majesties will not permit that the States-General and the Republic shall become the unfortunate victims of their trust in the generosity and the zeal of Her Imperial Russian Majesty and Their Royal Majesties for the maintenance of the right of neutrality, against the power of Great Britain, especially in the present circumstances when that realm is everywhere in arms, and the States-General with the ample navigation of private individuals, and the employment of a large number of sailors is not equal to the task of operating the sea power of the Republic, small or large as it may be.

The Ministers Plenipotentiary and Envoys at the Courts to which they are accredited shall insistently and urgently request a prompt and sufficient assistance from the allies, so that the States-General may not, without their help, before and at the time of the first onslaught, have to bear the weight and force of the attack of His Great Britannic Majesty, and that in consequence it may not be exposed to the danger of becoming useless to the alliance.

They shall hold themselves ready to enter into such further engagements as the high allies might deem necessary for the furtherance of the common cause and mutual defense.

They shall endeavor to find out if there is a disposition on the part of some of the allies to place at the service, for the account of the States-General, but for the common defense, some of their armed ships, or if there is willingness to transfer such ships, on the basis of a suitable subsidy, to the States-General which will ever be found prepared to perfect such an arrangement, and, finding that there is such

disposition, they shall do their utmost to strengthen it, and, the sooner the better, to report to the States-General anything definite and agreeable to the great need of the Republic.

**Netherland Ordinance concerning Commerce and Navigation,
January 26, 1781¹**

The States-General of the United Provinces of the Netherlands to all those who shall see these presents or hear them read, greeting: We announce that, the King of Great Britain having seen fit to make a hostile attack on this State without any valid reason, we find ourselves compelled to do all that can help our defense and to exercise the right which the conduct of the said King gives us to act against him in the same way as he is acting against us. And to prevent any injury from that direction, we are obliged and constrained, in so far as it lies in our power, and in so far as it can be done in conformity with the law of nations and without injury to our allies, friends, and neutrals, to deprive the said King of the opportunity and the necessary means which he might use to injure, more and more, this State and the good people of these Provinces.

That is why we have found it advisable and deemed it necessary to issue orders, as well as very severe prohibitions, to all those under our authority, and to inform and advise in a friendly manner all other nations which are in alliance with or neutral with respect to this State, and by these presents we order, prohibit, and advise respectively.

ARTICLE 1

That henceforth no one shall attempt to export from these Provinces on any vessels other than their own (or those that they may hire from the East or West Indian Companies, or other vessels that are permitted belonging to individuals in the service of the colonies of this State, after having obtained permission from the Admiralty, under bond of three times the value, to be verified to the satisfaction of the Admiralty Board within a certain period, proportional to the distances

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 276.

of the places, and to be declared on arrival at the place of destination) any arms, munitions or any other war material, fireworks, saltpeter, sulphur, refined or unrefined cannon powder, fuses, cannons, stone mortars, gun carriages, naval carriages, balls, bombs, frames, grenades, muskets, musketoons, guns, pistols, petards, powder bags, helmets, breastplates, shoulder-belts, pouches, pikes, halberds, swords, bayonets, and all other fire-arms or steel arms, among which are included gun barrels, locks, and everything that is used in assembling them, horses, saddles, pistol holsters, and everything that is used in harness for horses; masts, rods, and other turned wood, oak beams and other timber for the construction of ships, sawed or unsawed, the kinds of which are specified and declared to be construction timber by our proclamation of August 1, 1747, as well as canvas, hemp, cordage, string, cables, and furthermore anchors, iron, steel, small iron and steel, all kinds of copper, metal, pitch, and tar, and also flour, wheat, oats, horse beans and pigeon beans, under penalty of confiscation, if an attempt is made to export any of the above-mentioned articles, and in addition a fine of double their value, one-third of which to go to the informer, one-third to the officer making the accusation, and the remaining third to the State.

ARTICLE 2

That, moreover, no inhabitant of these Provinces shall attempt to export any of the above-mentioned articles, or to send any ships from these Provinces, or from other countries, kingdoms, places or cities, directly or indirectly, to any ports, islands, cities, or places of Great Britain, or that are under the rule of the said King of Great Britain, whether in Europe or outside of Europe. That no one also, even though a foreigner and not an inhabitant of these Provinces shall undertake to export any of the aforesaid articles from these Provinces to any of those places; all under penalty of confiscation of the said articles, and, in addition, punishment without mitigation as an enemy of the State.

ARTICLE 3

And considering that because of the duty that requires every legitimate sovereign to defend and preserve his good subjects and inhabitants by all possible means against all acts of violence and molestation, we can not, and, according to the common law and the

practices of all peoples, are not obliged to allow any articles of contraband to be furnished to the said King or to his subjects by any one whatsoever; we desire by these presents to notify and seriously to request and exhort all our allies and friends, neutrals, and, in general, all peoples and nations, not to attempt until further notice to transport from any countries, kingdoms, ports, place or cities of Great Britain or under the rule of the said King, either in Europe or outside of Europe, any articles of contraband, recognized as such in treaties, or, where there are no such treaties between them and us, any munitions of war or arms, artillery and its fireworks, or anything thereto appertaining, pistols, bombs, grenades, cannon powder, fuses, balls, pikes, swords, lances, halberds, helmets, breastplates, or other similar arms, as well as soldiers, horses, equipment for horses, or any other war material; since it is our intention to consider as a legitimate prize and to confiscate the aforesaid contraband goods found on board vessels in contravention of our present notice and ordinance, for transportation to the places mentioned.

ARTICLE 4

We order, furthermore, all our inhabitants and subjects, notifying and exhorting all our allies and friends, neutrals, and, in general, all peoples and nations that desire to navigate toward any kingdoms, countries, cities, or places of this State, situated in the Orient, in the Occident, or toward the north, or that wish to sail from those regions in this direction, to choose and keep to the open sea, since it is our intention, and we so declare by these presents, that every vessel sailing along the coasts of England, or other countries, islands, or places that are under the rule of the King of England, and all vessels that happen to be in shoals or shallows, thereby not being beyond suspicion of meditating some act in violation of our ordinance and notice, when loaded wholly or partially with any of the above-mentioned articles of contraband, shall be seized and brought in by captains or other naval officers, as well as by the privateers of these Provinces, to be adjudicated by the counselors of the Admiralty, as set forth in Articles 2 and 3 hereof, unless the said vessels should be driven into port by stormy weather or some other great necessity and from the circumstances it should be thus interpreted and decided in this way by the aforesaid Admiralty Board.

ARTICLE 5

That in order to forestall and prevent any fraud that might be attempted against the present ordinance and notice, we order and command all owners or vessels and merchants who are inhabitants of these Provinces, or those who send their vessels and goods out of this country; we notify and exhort, moreover, all other persons, of whatever nation they may be or whencesoever they may come, not to load or cause to be loaded in their vessels goods, wares, or merchandise, nor to transport them or cause them to be transported in any other way than under regular ship's papers, proper passports, letters of destination, bills of lading, of advice, and of shipment, or other similar documents, as is required for loading and transportation by virtue of the laws and proclamations of the places where the goods, wares, and merchandise are loaded, for we shall consider as subject to confiscation, and now declare to be legitimate prize, all vessels that shall sail with ship's registers of more than one sovereign or regent; as well as the goods, wares, and merchandise with which they are loaded, for which there is found to be more than one letter of destination, two sets of freight invoices, bills of lading, or other documents, as well as vessels and goods which are not properly supplied with the aforesaid requisite documents.

ARTICLE 6

And in order that every officer and commander of a war-ship, belonging either to the State or to private owners, who have commissions from His Highness the Prince of Orange and of Nassau, in his capacity as Admiral General of these Provinces, may be assured that the vessels which he may encounter at sea, laden with any of the aforesaid contraband goods, are not bound for the aforesaid ports, cities, and places of Great Britain or other countries under the rule of the aforesaid King, the aforesaid captains shall be permitted to accost at sea all vessels against which there may be any suspicion, and require them to show their ship's registers, passports, letters of destination, and bills of lading, to prove to whom the vessels belong, where and in what place they were loaded, of what their cargoes consist, and at what point they are to be unloaded. When all these have been shown to them and when they have ascertained that the aforesaid vessels are not bound, with any of the said contraband goods, to any ports or places under the rule of the King of Great Britain, they shall

permit them to pass freely; but if the contrary should, from the documents or otherwise, appear to be the case, they shall safely bring in such vessels with the goods on board, and shall take possession of all the documents that are found on board of such vessels and that have been shown to them; as well as to draw up in writing, in all due form, the declarations which the masters and members of the crew shall make with regard to the purpose of their voyage; likewise as to the character of the vessel and of its cargo, and they shall have the master sign these declarations, to be forwarded and delivered together with the documents found, the vessel itself, and its cargo to the member of the Admiralty Board, under whose authority the capturing vessel is. As to vessels under convoy, the declarations of the officers of the convoy that the vessels under their convoy are not loaded with contraband goods, according to their full knowledge thereof, must be accepted, and no further visit shall be required.

ARTICLE 7

It is also our intention that all the penalties herein provided shall apply to and shall be enforced against any of our inhabitants, who violate our ordinance, whether merchants, masters, or any one else, together with confiscation of the vessels and of the goods thereon belonging to the owner, as provided hereinbefore; or if they are not within reach, they shall be condemned to pay a fine equivalent to the amount, each one in his individual capacity, upon their arrival in these Provinces. Or if it should be learned and if it should be proved that they had contravened in any way our present ordinance and proclamation, they shall be considered as having been caught in the act and brought into port by our war-ships, or else seized and brought to justice in this country by other officers of the State.

ARTICLE 8

And in order that the execution of our present ordinance and notice may give no legitimate cause of complaint to any king, republic, prince, power, or city, who are in alliance and union with this State, we order and expressly charge by these presents all our nautical commanders and other officers, who are commissioned, whether of the war-ships of the State or of vessels armed by private individuals on commissions of His Royal Highness, to be guided strictly by the alliances and

treaties which we have made or may hereafter make with other kings, republics, princes, powers, and cities, concerning the transportation of contraband goods. To the same end, we order our Admiralty Board to notify in particular all nautical commanders, both those of the State and those of privateers armed under commissions of His Highness, to interpret properly the aforesaid Article 3, and to furnish them with extracts from the said treaties, with orders to govern themselves strictly thereby.

ARTICLE 9

Jurisdiction of offenses against this ordinance shall belong to the Board of Admiralty in the districts in which the violations shall be discovered, or from which the commanders who shall make the seizures sailed.

ARTICLE 10

In cases where the offenders are not caught in the act, but are accused thereafter, jurisdiction shall belong to the Board of Admiralty, or to the regular judges before whom they are brought in first instance. And in order that all officers and all persons in general who have at heart the welfare of the State, and who are opposed to such contraventions, may be the more attentive to the scrupulous observance of this ordinance by each and every one, and to the punishment of offenders, as an example, in accordance with the terms of these presents, the money realized through confiscation and otherwise shall be applied as it ordinarily is by the proclamations of the respective Provinces of the United Provinces, to wit: one-third to the informer, whether he is a sworn employee of the State or not, one-third to the officer making the accusation, and the remaining third to the State.

ARTICLE 11

As to vessels and goods that shall be seized and brought in by any war-ships of this State or by vessels sailing under commissions, because of violation of the present ordinance, and which shall be declared subject to confiscation and lawful prize, the division shall be made according to instructions, proclamation, and ordinance which have heretofore been published or which may hereafter be published.

ARTICLE 12

And in order that all vessels and goods, which shall be seized and brought to these Provinces because of violations, may be delivered into the hands of the said Board, we order expressly those who shall seize them strictly to observe, and to see to it that all those whose duty it is shall strictly observe, the terms of our proclamation of December 1, 1640, against general pillaging and forcible capture, with the warning that the penalties provided by the said proclamation shall be severely enforced against those who may have attempted any act contrary to the aforesaid prohibition.

ARTICLE 13

To prevent the losses resulting from the confiscation of the aforesaid vessels and goods from falling on any one other than the offenders, and from affecting through insurance any other inhabitants of these Provinces, as well as to restrict as much as possible English navigation and commerce, we expressly order, not only that none of our inhabitants shall attempt to insure or to have insured directly or indirectly, in this country or elsewhere, any contraband goods, in any way whatsoever; nor to give or to receive any refunds for the purpose of circumventing our proclamation, either directly or indirectly, on any pretext whatever, under penalty of confiscation of the sums insured by the insurers. That the said prohibition shall apply both to insurance and to refunds, and officers who shall be convicted of having neglected this part of their duty shall be severely punished by being deprived of their positions or such other penalty as the case may require.

And in order that no one may allege ignorance hereof, these presents shall be proclaimed, posted, and published in the usual way.

Done and adopted in our Assembly at The Hague on January 26, 1781.

(Signed) W. v. LYNDEN

By order of Their High Mightinesses,

(Signed) FLAGEL

Memorandum of the Court of Sweden for the Court of Russia concerning the Effect of the Accession of the Netherlands to the System of Armed Neutrality, February 28, 1781¹

When the Republic of the United Provinces of the Netherlands resolved to take part in the armed neutrality by its accession to the maritime conventions of the northern Powers, it was enjoying complete neutrality, and there was no obstacle to the accomplishment of an undertaking which was carried to its perfection by an act of accession and acceptance, signed at St. Petersburg on December 24, last, old style.

By this act the Republic bound itself to the common cause of neutral Powers, and acquired as such rights to the assistance of the other Powers, with which it was to share the obligations and advantages, in conformity with the terms of the conventions concluded during the past year between Sweden, Russia, and Denmark.

But the Republic was unable to maintain very long the status in which it had contracted its engagements. England declared war on it and forced the Republic to leave the class of neutral Powers and to take its place among the belligerent Powers. All this took place with such marvellous rapidity that the Ambassadors of both nations were recalled, letters of marque despatched, and several Dutch vessels taken before the news of the accession concluded at St. Petersburg reached The Hague.

In such extraordinary state of affairs, it is essential that the three Crowns of the north carefully consider the nature of their engagements with respect to the Republic, and decide the question in close union and concert.

The system adopted by these Powers is a system of perfect neutrality. It is only by following this system that they have the right to carry on their commerce freely, that they have bound themselves to protect it and mutually to uphold it. From this point of view they have fixed the obligations and the assistance which they mutually owe each other; their naval armaments are fitted out accordingly and are not intended to take the offensive against any one. The warships of a neutral nation, the obligations and advantages are the same on all sides; but it is not the same with regard to a nation at war. Measures can not be concerted, nor can they act in common with such a nation without overstepping the bounds prescribed by a strict neu-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 235.

trality, without upsetting the system upon which their union and their engagements are founded.

In spite of so marked a difference between the position of the three Crowns of the north and that of the Republic of Holland, the latter has addressed the former by memoranda transmitted to the Courts of Stockholm, St. Petersburg, and Copenhagen, in which memoranda the States-General of the United Provinces demand prompt and effective assistance from the three Courts by virtue of the accession of the Republic to the conventions of St. Petersburg and of Copenhagen, and by virtue of the engagements therein contained.

The principal ground on which the Republic bases its demand consists in a combination of the steps marking the conduct of the Court of London. It believes that these steps clearly show a determination not to allow the Republic to accede to the conventions of the northern Powers. It is out of hatred for this accession that the Republic has been dragged into the war, and therefore, in accordance with Articles 7, 8, and 9 of the said conventions, the Powers which accepted this accession must come to the aid of the Republic.

In view of the extraordinary and violent action of Great Britain toward the Republic, in view of the extreme care with which Lord Stormont prevented the declaration of the States-General from reaching him before the rupture was announced to Count de Wolderen, in view of all that preceded and followed this event, it is impossible to deny the motive which actuated the Court of London. But that reason was not given in that Court's manifesto; it mentions only acts previous to the resolution itself of the States-General with regard to its accession; and Article 6 of the conventions of Petersburg and of Copenhagen provides that the obligations of the contracting parties do not include matters which arose before the signing of the said conventions; that is to say, that they can have no retroactive effect.

The three Crowns of the north are therefore free to choose between adopting the reasoning and the consequences set forth by the States-General, or to accept the reasons announced in the declaration of war, which the Court of London has had published. In the first case, it will be necessary to take part in the war in favor of the Republic; in the second, they can, if it is deemed advisable, that the demand has been made, considering the Republic's quarrel as foreign to the cause of neutrals and as having arisen before the former's accession; but both of these lines of action appear to have great drawbacks. In the first case, it would be necessary to renounce the advantages of neutrality,

the glorious aims they had in mind when they formed the maritime association; it would be necessary to fling themselves into all the horrors and to suffer all the losses which are the natural consequences of war. In the second case, they would be exhibiting to the whole world a spectacle of utter weakness, and their absolute desertion of a State with which they fear to bind themselves by formal engagements.

There remains between these two extreme courses a middle course, or to speak more accurately, there is an expedient, and it seems advisable to begin with this. It remains further to see just where this expedient may lead and what its effect will be. This expedient would seem to consist in a declaration which the three Crowns of the north would consider themselves as authorized to have delivered to the Court of London, the terms of which should be decided upon among themselves, and by which His Britannic Majesty would be informed that the Republic has just acceded to their maritime conventions; that they regard the Republic, by reason of its accession, as an ally, having the same cause to uphold and the same rights to defend; that the three Crowns of the north have no desire to sit in judgment on the reasons which induced His Britannic Majesty to declare war on the Republic, but that they acknowledge themselves to be sincerely interested in the happiness and welfare of that State; that because of these sentiments the allied Courts hope that His Britannic Majesty will see fit to open a way for reconciliation and settlement between himself and the Republic; that the three Crowns would be glad to use their good offices to terminate the differences amicably; that they would consider themselves as performing a service essential to humanity, if they could make this reconciliation general, and that in the meantime they hope that both England and the Republic may see fit to make a beginning by ceasing hostilities and by restoring matters to the status that existed before the rupture. According to the agreement reached, this step can be taken either verbally or in writing, but separately, by the Ministers of the three Crowns residing in London. They should also decide among themselves as to the time when these common representations should be made, in order to give their efforts more weight and greater force; and if their language is supported by the naval armaments, which the Crowns of the north are now making ready, it is believed that England will reflect somewhat seriously thereon. At any rate, the dignity of our Courts would seem to require that they do something in favor of the Republic which is considered as their ally, and it is no

less necessary that our action should show to Europe the reasons, the moderation, as well as the firmness which have characterized the conduct of our Courts up to the present time.

It can not be foreseen whether the English Ministry will be willing to enter into negotiations, or whether it will merely pretend to be willing; but in any event, the respective Ministers should at the same time be instructed not to depart from the armistice proposal, nor from the proposal that the Republic shall in the meantime enjoy freedom of commerce; in default of which they can reply that they are not authorized to listen to proposals by England; but they will receive the proposals of that Court *ad referendum*, if such a condition is granted them. The three Crowns of the north will consult with the Republic concerning the matters to be submitted, or they will reduce the whole to what they consider just and reasonable; and they shall strive by common action to persuade both of the interested Powers to accept these conditions.

If in the course of such a negotiation there should be an opportunity to bring together the other belligerent Powers, this opportunity shall be eagerly seized and an effort shall be made to bring about a general pacification, establishing on the conclusion of peace the general maritime code for neutrals, adopted by our Courts, the general establishment of which will meet the wishes of the whole world and will elevate the Crowns cooperating therein to the highest point of glory.

STOCKHOLM, *February 17, 1781.*

Memorial of the States-General of the Netherlands to the Court of Sweden, February 28, 1781¹

The underwritten Envoy Extraordinary from their High Mightinesses the States-General of the United Provinces, to His Majesty the King of Sweden, in pursuance of an express order from his masters, has the honor to propose to his Swedish Majesty.

That their High Mightinesses have acceded, by their resolution of the 20th of November, 1780, to the treaty of armed neutrality, in con-

¹*Annual Register*, 1781, p. 311.

formity to the invitation of the northern Powers; and placing the most perfect confidence in the power, magnanimity, and fidelity of Their Imperial and Royal Majesties, for the fulfilling of their engagements, and the maintaining of their dignity, by accomplishing a work so gloriously undertaken, namely, the liberty of the seas, and freedom of navigation for all neutral nations, were not deterred by the consideration of the consequences, which that accession and declaration might be productive of to the Republic, from the part of the belligerent Powers. But their High Mightinesses have declared in favor of this accession and declaration, in replying implicitly on the sentiments of Their Imperial and Royal Majesties, whom they also acquainted in due time, of the measures taken in consequence thereof.

That the event has also justified their requisition, in regard to the British Court: since the minister of the latter, after his fruitless endeavors to thwart the accession to the alliance, took the resolution, on the first notice he had of it, to speak in a strain truly unprecedented, and ill suited to the mutual regard which the respective sovereigns owe to each other: without so much as granting to the Republic a sufficient time to consider on the matter, according to the political system of the Republic, which His Britannic Majesty is fully acquainted with: the English Minister insisted, nevertheless, upon an immediate and speedy satisfaction, and the punishment of a pretended offense, occasioned by the discovery of a negotiation with North America, without receiving as an ample satisfaction, the provisional answer, nor the formal disavowal of their High Mightinesses of a negotiation, of which (as acknowledged even by His Britannic Majesty) they had not the least share, or knowledge: of a negotiation relating to a pretended treaty, which, in itself, sufficiently denotes, from its terms, only the sketch of an eventual treaty entered into by private persons, without being formally authorized thereto by the body of the magistrates of Amsterdam, or by the states of the province of Holland, and much less by the States-General, whose members are alone authorized to enter into engagements in the name of the Republic.

The British Minister went even so far as to refuse noticing the resolution, by which the province of Holland (the only one concerned) was required to deliberate, how far the laws of the country might give authority to prosecute the persons accused, and punish them; a formality, without which no punishment can be inflicted, neither in England nor in this Republic, or any other country. Nay, the said

Minister went so far as to threaten, that in case of a refusal, his sovereign would adopt such means, as to procure himself that satisfaction. It was at the same time resolved to attack the Republic by surprise, and so far hasten the measures taken to begin hostilities, that Lord Stormont, making use of vain pretenses, would not so much as accept from Count Welderen the aforesaid declaration; and answered, under his hand, "That he (Stormont) could no longer look upon him as the Minister of a friendly Power, after having officially acquainted him of his King's manifesto:" whilst this very manifesto (and this should be noted) was delivered into the hands of Count Welderen, only an hour before the time appointed by Lord Stormont, the preceding day, for giving him audience. That, moreover, although no mention is made in the manifesto alluded to, of the Republic acceding to the treaty of the armed neutrality (which it was of the utmost importance to pass over in silence), it nevertheless appears clearly, to the penetrating eye of Your Majesty, as well as to all Europe, if the whole proceedings are attended to, and the time and manner in which the manifesto was published, that the hatred, occasioned by the Republic acceding to the confederation of armed neutrality, is the true motive of his British Majesty's resentment, and the only one that could excite him to an open attack against the Republic, by seizing, at once, upon a great number of Dutch merchantmen, and some ships of war. Besides that the aforesaid manifesto, known to your majesty, sufficiently displays the cause of England's displeasure: the more so as amongst the pretenses made use of to varnish over the hostilities against the Republic, it is said, that it had taken a neutral part: without the cabinet of St James's deigning to observe, that such answer was insulting to the neutral Powers who are perfectly acquainted with the treaties now in force between England and the Republic; and that the latter could not be charged with an intention of entering into an alliance with a Power not lawfully neuter in the present contest, and without observing that this liberty of negotiating had been put beyond all doubt, by England itself; since, by suspending, in April, 1780, the effects of the treaty passed in 1674, the English having manifested their intent of looking henceforth upon the Republic as a neutral Power, no ways privileged by any treaty.

That for the reasons here above mentioned, the animosity of Great Britain appears still more conspicuous, from the ill-grounded reproach contained in the said manifesto against this Republic, that their High

Mightinesses had encouraged the exportation of naval stores for France, by suspending the usual duties on those commodities, whilst it is known to all the world, that such a suspension has never taken place, and that the Republic had a right to export those commodities, not only agreeably to the treaty in 1674, but also in conformity to the principles laid down by the neutral Powers in the convention of armed neutrality. That consequently it would be needless to enter any farther into the merits of the said manifesto; as His Swedish Majesty has it in his power to appreciate himself its value, and must, moreover, be fully persuaded that the line of conduct pursued by their High Mightinesses since the beginning of the troubles with America, is an evident proof, that they have never favored or countenanced the revolted colonies; witness the many partial condescensions in favor of England, which were merely gratuitous on the part of their High Mightinesses, by circumscribing the trade within their own colonies; by refusing to grant the protection of their convoys to vessels laden with ship timber; and by recalling the Governor of St. Eustatia on some ill-grounded complaints of the British ministry: condescensions which have been rewarded by the attack and seizure of the convoy of Count Byland; by a violation of the territories of this Republic, and by the taking by force some American vessels from under the very batteries of the island of St. Martin.

That Their High Mightinesses having thus faithfully adhered to the system of moderation, it is evident that the resentment of His Britannic Majesty arises merely from their accession to the treaty of armed neutrality; and that, consequently, Their High Mightinesses are fully authorized to claim the performance of the conditions stipulated in the Articles 7, 8, and 9 of the treaty of armed neutrality, which form the basis of that union and alliance contracted between Their Imperial and Royal Majesties and the Republic. That therefore no obstacles can hinder or delay the fulfilling of the engagements contracted by virtue of the said confederation, of which the Republic ought to be considered as a member from the very moment in which their High Mightinesses acceded to the same resolution at The Hague; and dispatched their declaration, in conformity to the said accession and convention, to the belligerent Powers.

That if Their High Mightinesses had to complain only of a single act of offense, or an attack committed against them, which was likely to be redressed by the friendly interposition of their allies, they would

have claimed their intervention rather than have recourse to arms; but as their High Mightinesses find themselves actually and suddenly attacked in an hostile manner by His Britannic Majesty, in consequence of, and from mere resentment of the above mentioned alliance, they find themselves under the necessity of repelling force by force, and to return hostilities for hostilities; being fully persuaded that the allied Powers will not hesitate to make this their common cause, and to procure to their Republic due satisfaction and indemnity for the losses occasioned by an attack equally unjust and violent; and that the said Powers will moreover, in conjunction with the States-General, take such farther measures, as the exigences of the present circumstances may require. This Their High Mightinesses solicit with great earnestness, and rely upon it with so much more confidence, as they are firmly persuaded, that the generous and equitable sentiments, which actuate Their Imperial and Royal Majesties, will not suffer them to let the Republic fall a victim to a system of politics, not less glorious than founded in equity, and established for the security of the rights of neutral nations; and especially as the Republic, if left singly exposed to the iniquitous and violent attacks of England, would hardly be able to cope with that overbearing Power, and thus run the hazard of becoming totally useless to the said confederation.

For these reasons, the underwritten envoy extraordinary, insisting on the motives urged here above, and fully persuaded that the ratifications of the treaty signed at Petersburg will take place as soon as possible, has the honor, in the name and by express order of his masters, to claim the performance of the engagements stipulated in the Articles 7, 8, and 9 of the said treaty, and to require, in virtue thereof, a speedy and adequate assistance from His Swedish Majesty, whose noble and equitable sentiments, acknowledged by all Europe, will not permit him to abandon the complete establishment of a system worthy the highest praise.

The friendship and affection of Your Majesty towards their High Mightinesses, leave them no doubt of Your Majesty's willingly granting the assistance which they now claim, and also promise to the underwritten envoy a speedy and satisfactory answer, which he solicits the more anxiously, as every moment's delay may be attended with heavy and irreparable losses to the Republic.

(Signed) D. W. VAN LYNDEN

STOCKHOLM, *February 28, 1781.*

**Rescript of Her Majesty the Empress of Russia to Count de
Moussin Pouschkin, Her Minister to Sweden, 1781¹**

Your reports and the communications of Baron Nolken, the Swedish Minister, informed us at approximately the same time both of the disposition of the Court of Sweden with regard to the war which has broken out between the two maritime Powers and of the desire of His Swedish Majesty to learn our own sentiments on this subject. Accustomed as we are to reply in kind to the confidence of our allies, we are still less inclined to deviate from this rule in the present circumstances, in which consideration for our respective engagements with regard to armed neutrality must elicit in the same degree our attention and our interest. Therefore, you are authorized to speak confidentially with Count Scheffer, so that he may inform his master, telling him that as soon as we learned of the sudden departure of the Duke of York from The Hague, we hastened to make the strongest kind of representations to the Court of London, to prevent it from entering upon active hostilities. We were then ignorant of the fact that hostilities were to follow immediately upon the departure of its Ambassador. Being convinced of this fact a few days later and realizing the futility of any step to prevent hostilities, we turned our attention to new measures better adapted to the times and circumstances, which would be capable of extinguishing the sparks of war at the outset. We were led to this course by a twofold reason: the thought of humanity suffering from the shedding of innocent blood, and the interests of neutral nations with regard to their commerce with belligerents. Although, after the formal request of the King of England for our mediation, conjointly with the Emperor of the Romans, to bring about peace between him and the Courts of France and Spain, there seemed to be some hope for opening peace negotiations, nevertheless, as time was required to discuss the matter with the two Crowns and to receive their mutual consent, we have deemed it advisable to find a shorter way to reconcile England and Holland and have offered our separate mediation for that purpose. It was our intention by this action to prevent in this reconciliation the discussion of any subject that is foreign to them, especially the question of the independence of the Americans, which would have caused the chief difficulty. The States-General received our offer with

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 240

gratitude, and were eager to take advantage of it, as you will see from the enclosure herewith. England, on the contrary, declined, postponing its reconciliation with the Republic until the general peace negotiation, under the joint mediation of the two Imperial Courts. When that takes place, we shall not fail to exert our own efforts in favor of the Republic of Holland as well as to interest His Majesty the Emperor in its behalf, in order that it may be included in the general pacification. After having given assurances to the States-General, we promised them at the same time to confer amicably with our allies with a view to a further common and unanimous effort with the Court of London, to bring it to a moderate course and to the love of peace.

We hesitated the less to give these assurances to their High Mightinesses, because we noted in the memorandum of February 17, communicated by Baron Nolken, a copy of which is enclosed herewith for your information, a decided determination on the part of His Swedish Majesty to follow a similar course. The entire contents of this memorandum show, on the one hand, the profound penetration of that Prince, and, on the other hand, a point of view in perfect accord with ours. In truth, the time and the circumstances in which Great Britain has attacked her old ally, the Republic of Holland, indicate sufficiently that the real cause of her aggression lies in the accession of the States-General to our maritime conventions, the more so because Holland thereby protected the navigation and commercial industries of her subjects, the greater part of which was carried on with the enemies of England.

But, on the other hand, it is no less true that the actual rupture preceded the formal accession of their High Mightinesses to the conventions of Copenhagen and Petersburg, and that the reasons set forth antedate and are foreign to the cause of the allies of the armed neutrality. In the first part of this argument, Articles 7, 8, and 9 are entirely favorable to the Dutch: but Article 6 frees us, in terms no less clear, from the duty of participating in their war with England. So essential a difference in the stipulations of these conventions leaves the three allied Courts free to follow the course that is most advantageous and the most in harmony with their interests.

There could be no more judicious or wiser appraisal of the delicacy of the decision to be made than that adopted in the Swedish memorandum. The drawbacks on each side were discussed

shown in their true light, with an indication of the best way to avoid them. In admitting this method—that is to say, the observance of neutrality as the rule of conduct for the three allied Crowns in the new war between maritime Powers,—we did not fail to inform at once the Courts of Stockholm and Copenhagen of the orders which we had transmitted to our commanding officers at sea to regard the Republic of the United Provinces as a neutral Power with respect to the two branches of the House of Bourbon, and belligerent with respect to England. In calculating the time, we shall expect to hear soon from you and from the Councilor of State, Mr. Sacken, that the Kings our allies have likewise given similar orders in their States, so that all our actions and all the steps that we take shall be everywhere entirely uniform in all respects, and bear witness to the close union among us, which in the centuries to come must justify this beneficent system of neutral merchant navigation.

After having taken the measures that we owe to the welfare of our own States before all foreign interests, we shall not fail, as we have said heretofore, to employ in favor of the Republic of Holland all means compatible with this paramount duty. Consequently we willingly give our support to the idea of His Swedish Majesty that suitable representations be made at the Court of London in the name of the three allied Courts. In the Swedish memorandum there is question of a declaration, but a declaration might by its very nature carry us beyond our intentions, while a mere verbal hint, expressing the same views with the same force, can bind us in no way against our will and desire. This observation, as simple as it is essential, will not escape Count Scheffer's sagacity, with whom you are to confer as to the wording of these representations, as to the time when they shall be made at London, and as to the manner in which our respective Ministers at that Court shall make them.

We should not have placed any obstacle in the way of the adoption of the very wording proposed in the above-mentioned memorandum, since we found it as moderate as it was in keeping with the purpose in view, if circumstances, which have now become well known to the Court of Stockholm, did not seem to require certain changes. To this end, you will find hereto annexed a new draft of the representations, which you will bring to the knowledge of Count de Cheffer, telling him that in our opinion, in order that they may be more readily understood by the English Ministry, they might be delivered in writ-

ing, on condition, however, that they be regarded as merely a verbal hint. We shall not object if the Court of Sweden or the Court of Denmark, for reasons of their own, should make use of a different wording or of a different style. It is sufficient if the substance is the same, and if on that account the English Ministers pay greater attention to this salutary action on the part of the three sovereigns in concert.

The speeches and the conduct of these Ministers indicate plainly enough that nothing short of the fear of involving their country in a war with all Europe and of being taxed with personal responsibility therefor will induce them to listen to reasonable terms of peace. To make them more tractable, it would doubtless be well to keep this fear alive in them. There is a means of accomplishing this which is as efficacious as it is inexpensive in the fact that the sovereigns hold a considerable portion of their naval forces armed and ready for action. Let the Swedish and Danish squadrons cruise for a time beyond the Sound, and we for our part shall keep a squadron in the Mediterranean and another in the Arctic Ocean, as a defensive measure, following the example of the preceding year against foreign privateers. And as, to assist this twofold action, our squadrons which passed the winter of last year at Leghorn and at Lisbon, are to return immediately or have already returned to the Baltic, we shall thus present at the same time very respectable armaments in these different seas. The possibility of the Russian, Swedish, and Danish squadrons meeting at the same point immediately on the orders of their sovereigns will doubtless have its effect on all the belligerent Powers and will at the same time ensure the safety of the merchant navigation of our respective subjects. Therefore such a joining of forces, even before it is effected, will secure to the three Courts a very great and a very real advantage. In communicating a summary of this rescript to Mr. Sacken, we enjoined him to discuss its contents with the Danish Minister and to inform us without delay of the result of their conference. He has orders to inform you directly, so that as much time as possible may be gained in putting into execution concerted and unanimous measures, to be decided upon among us, and so that we may be in a position to give our Minister at London necessary instructions, which shall be sufficient together with those that our allies will give to their Ministers at the same Court. We enclose herewith a copy of the rescript sent to the said Mr. Sacken. You will bring it to the knowl-

edge of the Swedish Minister, and you will insist in your conversation with him upon the necessity of his Court's entering, on its part, into direct communication with the Court of Copenhagen, also for the purpose of saving time. As it is far from our intention to embarrass, in a common cause, the will and intentions of the Kings, our allies, you will not fail in your conversation with the Swedish Minister to discuss with him the sentiments of his own Court, and to receive *ad referendum* all proposals that he may submit, assuring him in advance that we shall consider them with all due respect and deference.

Prussian Declaration and Ordinance concerning Navigation and Maritime Commerce, April 30, 1781¹

His Majesty the King of Prussia, etc., in view of the almost general maritime war now taking place in the southern parts of Europe, has taken especial care and measures to procure to his subjects engaged in navigation and maritime commerce all possible security, and to that end has not only had all the belligerent Powers requested to impart to the commanders of their war-ships and ship-owners strict orders to have the Prussian flag adequately respected, and that Prussian ships bearing merchandise which, according to usages and international law, is free and not to be regarded as contraband, shall everywhere be allowed to pass unmolested and unhindered; that they shall be neither damaged nor stopped, and even less be taken to foreign ports without necessity and authority, concerning which matters they receive friendly and encouraging assurances from the respective Courts; the said Courts, in order better to observe that object, have instructed their Ambassadors residing at the Courts of the belligerent Powers, opportunely and energetically, by intercession and representation, to receive their seafaring subjects whose ships might possibly be captured and confiscated, and, as frequently happens, be robbed at sea, so that such ships may soon be released and compensated, and that legal action arising therefrom may be decided and settled as soon as possible, and with due impartiality. Now, in order that the Royal Ambassadors may properly

¹Translation. German text at Martens, *Recueil de Traités*, vol. 3, p. 284.

attend to these matters, the Royal Prussian subjects who find themselves in such situations as described, must therefore address themselves in person, or by duly authorized agent, to the Royal Ambassador accredited to the Court where the claim is to be presented, and acquaint him with the difficulty and with all the facts concerning it, that in the proper place and by his intercession he may assist them. They must not, however, rely solely upon such ministerial intervention, but must present their complaints to the admiralty and maritime courts of the country to which their ship is taken, or where they sustained injury, and with the required proofs, legally prosecute their complaints through the various courts established in the country, through authorized agents or advocates, in which case, it is to be hoped, they shall receive good legal assistance, and in the want of such assistance they can address themselves to the royal Ambassadors, in order, if necessary, to present proper complaint at every Court, according to the circumstances, and to bring about their redress.

However, in order still further to secure the navigation of the Prussian subjects, His Majesty the King of Prussia has had the request presented through his Ambassadors, to Her Majesty the Empress of all the Russias and both the other two northern maritime Powers, which three Courts, as is well known, have allied themselves in defense of maritime neutrality: that they, as Powers with which His Majesty is living in truest friendship, instruct the commanders of their war-ships, to take under their protection and convoy, such Prussian merchant ships which they may meet on the sea, as long as they remain within their sight and cannon range, in case such ships should be captured or molested by the war-ships and ship-owners of the belligerent Powers. Through a written declaration for Her Ministry, Her Imperial Majesty of all the Russias, has given assurances to His Majesty, as her confederate ally; that the commanders of her war-ships had not only been ordered to protect against molestation and attack the ships of Prussian merchants and sea-farers as belonging to a Power allied with her, and to observe most strictly the rules of neutrality as established in international law, in case they should encounter such ships, but that her Ambassadors accredited to the Courts of the belligerent Powers would be instructed that, as often as the Royal Prussian Ambassadors had cause to present claims and complaints to these Courts because of obstructions to commercial navigation of Prussian subjects, the Ambassadors should support them

through their intervention, in the name of Her Russian Imperial Majesty; that in return, Her Majesty expected His Majesty the King of Prussia to impart similar instructions to his Ambassadors at the Courts of the belligerent Powers, conformably to the maritime convention of the northern maritime Powers, and to support in all cases by emphatic intervention the representations of the Ambassadors of the northern Powers allied in behalf of maritime neutrality, in case they had cause to demand satisfaction for the subjects of their sovereigns.

His Majesty the King of Prussia has received with obliging gratitude this friendly declaration of Her Imperial Majesty and made a corresponding declaration, instructing his Ambassadors at foreign Courts accordingly. On the occasion of other maritime negotiations, His Majesty had already requested the Royal Court of Denmark to extend to Prussian merchant ships the protection of the Danish maritime Power, and in answer thereto, had received the friendly assurance that the Royal Danish war-ships would take all Prussian merchant ships under their protection, provided that these ships would conform to maritime treaties entered into between the Danish Crown and other Powers. His Majesty the King of Prussia has made a similar request of the Royal Swedish Court, and from the friendship of His Majesty the King of Sweden, expects to receive such assurances as have been received from the Empress of Russia and from the King of Denmark.

Therefore, all these circumstances are herewith announced to all royal subjects who engage in sea-faring and in maritime commerce, so that they and the ship captains may act conformably thereto; and in cases of necessity, should they be attacked, molested or captured on the sea by the war-ships and ship-owners of the belligerent nations, they may address themselves to such Russian Imperial, Royal Danish or Royal Swedish war-ships, as may be cruising near-by, ask for their protection and assistance, and as far as possible keep in touch with the fleets and convoys of these three northern maritime Powers.

In view of the fact, however, that it is merely the intention of His Majesty the King, by the above-mentioned measures to safeguard the lawful and innocent maritime commerce of his subjects, and in no way to injure the high Powers which are waging war among themselves and with which His Majesty is living in friendship, nor to favor any trade which might be injurious to them or unlawful, there-

fore, all royal subjects engaging in maritime commerce and navigation, shall so organize their commerce and navigation that they will observe a strict neutrality, in accordance with natural law or the generally accepted rights of nations. But, as there is a difference between the different treaties which one and other Courts have entered into, therefore the royal Prussian subjects shall preferably conform themselves to the well-known declaration made by Her Imperial Majesty of all the Russias during the preceding year to the belligerent Powers, and to the ordinance issued by Her Majesty, May 8, 1760, to her Board of Trade, which His Majesty regards as most conformable to the law of nations and to their own rights, and carry on their maritime trade in accordance therewith. In consequence, His Majesty the King of Prussia hereby commands all his subjects who engage in navigation and maritime trade:

ARTICLE 1

That they shall not take part in the present war under any pretext nor, under the Prussian flag, supply the belligerent Powers with any merchandise which is generally regarded as contraband and forbidden, or with real war necessities such as cannon, mortars, bombs, grenades, guns, pistols, bullets, flint-stones, fuses, powder, saltpeter, sulphur, pikes, swords and saddles. Of such they shall not carry more on their merchant ships than required for their own use.

ARTICLE 2

Prussian navigators may, in Prussian ships carry to the belligerent and neutral nations all other goods which, apart from those indicated in the preceding article, are not forbidden nor real war necessities, especially the products of any royal province; and His Majesty expects from the sense of justice and of friendship of the belligerent Powers that they will not permit their armed ships to molest and to seize Prussian ships carrying masts, timber, hemp, tar, corn and other like articles, not real war necessities, but which may subsequently be used to such ends, and which constitute the foremost and almost the only articles of Prussian trade; otherwise, Prussian maritime commerce would be destroyed; and His Majesty can not be expected to consent that the said commerce be stopped or allowed to stagnate because of the war between the belligerents. On the ground of these

same principles it is hoped that the belligerent Powers will let pass free and unhindered, that they will not appropriate and seize, nor confiscate the unprohibited merchandise and cargoes of Prussian subjects which might be found aboard the ships of the belligerent nations, nor the unprohibited merchandise of the belligerent nations which is on board Prussian ships, and in all such cases His Majesty will as far as possible protect his subjects, will personally see to it and cautiously act to the end that their merchandise and cargoes be shipped on Prussian ships under the Prussian flag, and not to engage to a large extent in the transportation of merchandise and goods belonging to the belligerent nations, and to guard against all possible misunderstandings and mishaps, especially to carry on a purely legitimate Prussian maritime trade.

ARTICLE 3

All Prussian ships sailing on the sea must provide themselves with regular passes and attestations from the boards of the admiralty, of the war and of the authorities of each province, or from the magistrates of each locality, in the customary way, as well as with the usual charter document, bill of lading and other certificates which must state the quality and quantity of the cargo, the name of the owner and consignee together with that of its destination. These maritime documents must be clear and unequivocal, must be at all times on board of each ship, and under no circumstances ever be thrown overboard; and especially, every skipper must guard against false maritime papers.

ARTICLE 4

If loaded in a foreign port, every Prussian ship must there provide itself with the required and customary local maritime papers, in order to prove its identity everywhere, to what nation it belongs, the cargo it carries, whence it comes and whither it is bound.

ARTICLE 5

There shall be no maritime officers and employees on board Prussian ships, nor shall more than one-third of the sailors belong to the belligerent nations.

ARTICLE 6

All Prussian navigators are hereby forbidden to carry cargoes and merchandise of whatever nature, to such localities and parts as are

really besieged, or closely blockaded and closed by one of the belligerent Powers.

ARTICLE 13

Prussian subjects, sea-farers and merchants shall not lend their names to foreign nations, but shall carry on their commerce as is permissible in accordance with the rights and customs of the peoples, in such manner as not to cause injury to any one of the belligerent nations, nor to give cause to any one of the belligerent nations to enter a rightful complaint.

Those royal subjects who conform themselves strictly to this ordinance may expect all possible protection and assistance from His Royal Majesty; those, however, who act against this ordinance may not expect such protection and assistance, but must remain personally responsible for all danger and loss they might incur in so acting.

Given at Berlin, April 30, 1781.

By special command of His Majesty the King.

E. F. v. HERZBERG
FINKENSTEIN

**Convention between Russia and Prussia for the Maintenance of the
Freedom of Commerce and Navigation of Neutral Nations, and
Separate Articles, May 19, 1781¹**

The justice and equity of principles which Her Majesty the Empress of all the Russias adopted and acknowledged before Europe by her declaration of February 28, 1780, transmitted to all the belligerent Powers, have determined His Majesty the King of Prussia to take part as directly as possible in the glorious system of neutrality which has resulted therefrom, with the universal commendation of all the nations, not only by acknowledging these principles which are founded on justice and the law of nations, but also by acceding thereto and by guaranteeing them by a formal act. This determination of His Prussian Majesty meeting entirely with the desire of Her Imperial Majesty

¹Translation. French text at Martens, *Recueil de Traité*s, vol. 3, p. 245. Ratifications exchanged at St. Petersburg, June 15, 1781.

of all the Russias to give them a stable and solid basis by having them solemnly recognized by all the Powers as the only principles capable of establishing security of commerce and of navigation for neutral nations in general. Their Majesties have seen fit with one accord to enter into negotiations regarding a subject in which they are both equally interested, in so far as it can work to the welfare and advantage of their respective subjects, and to this end they have chosen, appointed, and authorized, to wit: His Majesty the King of Prussia, the Count von Goertz, his Minister of State, and his Minister Extraordinary at the Imperial Court of Russia; and Her Imperial Majesty of all the Russias, Nikita Count Panin, her Privy Councilor, Senator, Chamberlain, and Chevalier of the Orders of St. Andrew, of St. Alexander Newsky, and of St. Anne; John Count d'Osternann, her Vice Chancellor, Privy Councilor, and Chevalier of the Orders of St. Alexander Newsky and of St. Anne; Alexander de Besborodka, Major General of her Armies and Colonel commanding the Kiovia Regiment of Militia of Little Russia; and Pierre de Bacounin, her Councilor of State, Member of the Department of Foreign Affairs, and Chevalier of the Order of St. Anne; who having exchanged their full powers, found to be in good and due form, have agreed upon the following articles:

ARTICLE 1

Their Majesties being sincerely resolved to maintain relations of friendship and of the most perfect harmony with the Powers now at war, and to continue to observe the strictest and the most scrupulous neutrality, declare their desire to see to the most rigorous execution of the prohibition of commerce in contraband by their subjects, with any of the Powers now at war or which may hereafter enter into the war.

ARTICLE 2

To avoid any ambiguity and any misunderstanding regarding what is to be considered contraband, Her Majesty the Empress of all the Russias has declared that she recognizes as such only the goods included under this head in Articles 10 and 11 of her treaty of commerce with Great Britain, whose obligations, which are founded entirely on the natural law, she has extended to the Crowns of France and Spain, which countries have not heretofore bound themselves with her Empire by any engagement relating purely to commerce. Since there likewise

exists no engagements of this nature between His Prussian Majesty and the Powers now at war, he declares for his part, that, in this respect, he also desires to bind himself with them by the obligations of the aforesaid treaty of commerce between Russia and Great Britain, with specific reference to Articles 10 and 11 of that treaty.

ARTICLE 3

Contraband determined and excluded from commerce, in conformity with Articles 10 and 11 of the aforesaid treaty concluded between Russia and Great Britain on June 20, 1766, His Majesty the King of Prussia and Her Imperial Majesty of all the Russias understand and desire that all other trade be and remain absolutely free on the basis of the general principles of the natural law, which Her Majesty the Empress has solemnly demanded, and of which freedom of commerce and of navigation, as well as the rights of neutral peoples, is a direct consequence; and in order that they may not depend upon an arbitrary interpretation, suggested by isolated and temporary interests, Her Imperial Majesty of all the Russias has adopted and established as a basis the four following points:

(1) That every vessel may navigate freely from port to port and along the coasts of the nations at war.

(2) That effects belonging to the subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband.

(3) That to determine what constitutes a blockaded port, such designation shall apply only to a port where the attacking Power has disposed its vessels sufficiently near in such a way as to render access thereto dangerous.

(4) That neutral vessels may be stopped only for just cause and for acts that are perfectly evident; that their cases shall be decided without delay; that the procedure shall always be uniform, prompt, and legal, and that in every instance, besides the indemnities allowed to those which have suffered loss without having been at fault, complete satisfaction shall be given for the insult to the flag.

His Majesty the King of Prussia accedes to these principles, adopts them also, and guarantees them in the most positive manner, binding himself to uphold them and demand their observance whenever the interests of the commerce and navigation of the subjects of the two high contracting Parties may so require.

ARTICLE 4

In return for this accession Her Majesty the Empress of all the Russias will continue to protect the commerce and navigation of the Prussians with her fleets, as she has already agreed to do at the request of His Majesty the King of Prussia, having had orders sent to all the commanding officers of her squadrons to protect and defend against all insults and molestation the merchant ships of Russia, which happen to be in their course, as being the vessels of a friendly and allied Power that strictly observes neutrality, it being understood, however, that the aforesaid vessels shall not be used for any illicit commerce, or for any purpose that is contrary to the rules of the strictest and most scrupulous neutrality.

ARTICLE 5

If it should happen, in spite of the greatest care on the part of the two contracting Powers for the observance by them of the most complete neutrality, that the merchant vessels of His Majesty the King of Prussia and of Her Imperial Majesty of all the Russias should be insulted, pillaged, or taken by the war-ships or private ship-owners of any of the Powers at war, then the Minister of the injured party at the Court, whose war-ships or private ship-owners shall have committed such acts, shall make representations, shall make claim for the captured merchant vessel, and shall insist upon suitable indemnities, never losing sight of reparation for the insult to the flag. The Minister of the other contracting Party shall join with him and support his complaint in the most energetic and efficacious manner, and they will thus act with one accord. If justice should be refused, or if it should be postponed from time to time, then Their Majesties shall employ reprisals the Power so refusing and they shall continually consult with each other as to the most appropriate method for carrying out such reprisals.

ARTICLE 6

If it should happen that either of the two contracting Powers or both of them, because of or in contempt of the present act, or for any other cause relating thereto, should be disturbed, molested, or attacked, it has been likewise agreed that the two Powers shall make common cause for their mutual defense, and shall work and act in

concert in order to secure entire and full satisfaction, both for the insult to their flag and for the losses caused to their subjects.

ARTICLE 7

The present act shall have no retroactive effect, and therefore no action shall be taken with respect to differences that have arisen before its conclusion, unless it is a question of continuous acts of violence, tending to establish an oppressive system for all the neutral countries of Europe in general.

ARTICLE 8

All the stipulations set forth in the present act must be regarded as permanent and as constituting the law in the matter of commerce and of navigation, and whenever there is occasion to determine the rights of neutral nations.

ARTICLE 9

The principle aim and object of this act being to ensure general freedom of commerce and of navigation, His Prussian Majesty and Her Imperial Majesty of all the Russias agree and engage in advance to allow other neutral Powers to accede hereto, which by adopting the principles herein contained shall share its obligations as well as its advantages.

ARTICLE 10

In order that the Powers at war may not allege their ignorance of the engagements undertaken by Their said Majesties, they shall communicate in a friendly way to the said Powers these engagements, which are in nowise hostile to them nor to the detriment of any one of them, but aim solely to ensure security of commerce and of navigation to their respective subjects.

ARTICLE 11

The present act shall be ratified by the two contracting Parties, and the ratifications thereof shall be exchanged within six weeks from the day of the signing thereof, or sooner if possible.

In faith whereof we, the plenipotentiaries, by virtue of our full powers have signed and have hereto affixed the seals of our arms.

Done at St. Petersburg, May 8, 1781.¹

[L.S.] E. COUNT VON GOERTZ

[L.S.] C. N. PANIN

[L.S.] C. JOHN D'OSTERMANN

[L.S.] ALEXANDER DE BESBORODKA

[L.S.] PIERRE BACOUNIN

SEPARATE ARTICLES

ARTICLE 1

As His Majesty the King of Prussia and Her Majesty the Empress of all the Russias are equally interested in preserving the security and tranquillity of the Baltic Sea, and in protecting it from the disturbances of war and privateering, a system the more just and natural because the Powers whose States border thereon enjoy the most profound peace. They have mutually agreed to maintain that it is a closed sea, incontestably such by its geographical situation, in which all nations must and may navigate in peace and enjoy all the advantages of perfect tranquillity, and to this end to adopt among themselves measures capable of guaranteeing this sea and its coasts against all hostilities, piracies, and acts of violence.

ARTICLE 2

Since stress of weather or some other circumstance may force Russian vessels to take refuge in a Prussian port, either to pass the winter, to make repairs, or to escape the storm, His Majesty the King of Prussia engages to see to it that they are received and treated as vessels of a friendly and closely allied Power, and that are furnished, at a just and reasonable price, with the necessary materials for repairs, with the provisions needed by the crew for its sustenance: in a word, to see that all necessary arrangements are made in order that these vessels and their crews may be treated and cared for in the most friendly manner.

ARTICLE 3

At the more or less remote time when peace shall be restored between the belligerent Powers, His Majesty the King of Prussia and Her

¹May 19, 1781, new style.

Majesty the Empress of all the Russias shall use their best efforts with the maritime powers in general to bring about the universal acceptance and recognition in all naval wars, which may arise hereafter, of the system of neutrality and the principles established in the present act, forming the basis of a universal maritime code.

ARTICLE 4

As soon as this act shall have been ratified and the exchange of ratifications shall have taken place, the high contracting Powers shall take care to communicate it, with the exception of the separate articles, in good faith, conjointly and with one accord, through their Ministers accredited to foreign Courts, and specifically those Courts which are now at war.

These separate articles shall be considered and regarded as forming a part of the act itself and shall have the same force and effect as though they had been inserted word for word in the said act, concluded the same day between the two high contracting Parties. They shall be ratified in the same way and ratifications thereof shall be exchanged at the same time.

In faith whereof we, the plenipotentiaries, by virtue of our full powers, have signed them and have affixed thereto the seals of our arms.

Done at St. Petersburg, May 8, 1781.

[L.S.] COUNT VON GOERTZ

[L.S.] C. N. PANIN

[L.S.] C. JEAN D'OSTERMANN

[L.S.] ALEXANDRE DE BESBORODKA

[L.S.] PIERRE BACOUNIN

Treaty between His Majesty the Emperor of the Romans and Her Majesty the Empress of Russia relative to Armed Neutrality, July 10, 1781¹

As the result of the war² which has just broken out between Great Britain on the one hand, and France and Spain on the other hand, the

¹Translation. Italian text at Martens, *Recueil de Traité*s, vol. 3, p. 252.

commerce and navigation of neutral Powers have suffered and are suffering considerable injury; in consequence, His Majesty the Emperor of the Romans and Her Majesty the Empress of Russia, by reason of their assiduous efforts to procure with dignity and diligence the security and prosperity of their subjects and with due regard for the rights of nations in general, have deemed it necessary in the present condition of affairs to regulate their conduct in accordance with the said principles, the Empress of Russia by means of her declaration of February 28, 1780, addressed to all the belligerent Powers, exhibited to the eyes of all Europe the fundamental rules inferred from the primitive right of all the peoples which Her Majesty claims and adopts as bases of her conduct during the present war. This effort of Her Majesty directed to watch over the upholding of rights common to all nations having obtained the approval of all the neutral Powers, because it deals with the defense of their most essential interests, the point has been reached to define and establish for all present and future time a permanent and invariable system, in harmony with the prerogatives, conditions and obligations of a strict neutrality; and His Majesty the King of Denmark and Norway, His Majesty the King of Sweden, the Republic of Holland and other most respectable Powers having approved this system, there has come into being the accord and unanimity by which the above-mentioned Emperor of the Romans and the Empress of Russia have resolved further to strengthen and secure their firm and constant friendship and their mutual confidence, in conformity with the interests of their realms and States, by means of a formal convention. To that end, Their Imperial Majesties have stipulated and concluded the following articles:

ARTICLE 1

The above-mentioned Imperial Majesties are sincerely determined for ever to maintain the most steadfast and sincere friendship as most useful to the House of Austria nor less so to the Empire of Russia; to maintain reciprocal concord and union; to maintain friendly relations with the Powers actually at war and to observe the strictest neutrality, declaring at this time their readiness firmly to bring it about that the prohibition of the trade in articles of contraband with the States now engaged in hostilities and with those which may subsequently be involved therein, shall be strictly observed by their respective subjects.

ARTICLE 2

In order to remove any misunderstanding or equivocation with regard to the term contraband, His Majesty the Emperor and Her Majesty the Empress of Russia declare that they will only recognize as articles of contraband those which are included as such in treaties existing between the above-mentioned Courts. Her Majesty the Empress of Russia as a maritime Power conforms entirely in this to its treaty of commerce with Great Britain, and furthermore, extends the obligations of the same which are wholly based upon the natural law, to the Crowns of France and Spain which at the date of the present convention have no treaty of commerce with her empire. His Majesty the Emperor will act in like manner toward France and England by reason of the absence of any agreement determining any conditions upon this matter.

ARTICLE 3

Having in this manner determined and defined what is to be understood as contraband in conformity to the treaties and conventions between the high contracting Parties and the belligerent Powers, and especially in the treaty stipulated between Russia and Great Britain of June 20, 1766,¹ it is the intention of His Majesty the Emperor and of the Empress of Russia that all other articles of commerce be and remain free to their respective subjects. In their declarations addressed to the belligerent Powers, Their Majesties have already based themselves upon the general principles of the natural law from which derive the freedom of commerce and of navigation as legitimate rights of neutral nations, and they have likewise resolved that all the other Courts which have approved the proposed armed neutrality, shall no more depend on arbitrary interpretation, prompted by partial and momentary interests. To that end, they have agreed upon the following:

(1) That any vessel flying the Russian flag, or the Imperial and Tuscan flag, be permitted to navigate from one port to another, and along the coasts of the belligerent Powers.

(2) That the goods belonging to the subjects of the above-mentioned belligerent Powers shall be free upon neutral vessels, that they may not be confiscated, nor be seized by force, excepting articles of contraband.

¹Not printed.

(3) That in order to determine what rule shall be observed relative to a blockaded port, a port shall only be regarded as such where enemy vessels have taken a permanent station.

(4) Neutral vessels may not be stopped, except for just reasons and with evident proof, and adjudged without loss of time; legal actions shall be expedited and in uniform manner according to maritime law, and for any injury sustained without good cause, a claim shall be presented by concerted agreement on the part of Their Majesties, and besides demanding reparation for the injury done, full satisfaction shall be exacted for the insult done their flag.

ARTICLE 4

In order to protect the general commerce of their subjects founded upon just and certain principles, Her Majesty the Empress of Russia has resolved to equip a proportionate number of vessels and frigates to act as escort to merchant vessels as may be required by the urgencies of commerce, and they may come to shore and remain at their pleasure in all the ports subject to the House of Austria, and especially in the ports of the Flanders.

ARTICLE 5

In case the merchant ships of the contracting Parties should be on the sea without being escorted by an armed vessel, and hence, in need, could not obtain protection, the commander of war vessels of Her Majesty the Empress of the Russias, whenever the request is made, shall without distinction grant all necessary assistance, provided the vessel have not engaged in an illicit commerce, contrary to the laws of neutrality.

ARTICLE 6

The present convention shall not be retroactive, and in consequence, it shall not apply to disputes which may have arisen before the conclusion of the same, because the questions might not concern the hostilities still in course and which tend to oppress all the neutral nations.

ARTICLE 7

If, notwithstanding the diligent and friendly solicitude of the two contracting Parties and the strictest observance of neutrality, Russian or Austrian merchant ships should suffer insults, pillaging or seizure

by war vessels, or ship-owners of one of the belligerent Powers, then the Minister of the offended party, together with the Minister of the confederated party shall address vigorous representations to the Court whose war vessels may have committed the attack, demand the release of the seized vessels, insist upon a proper satisfaction and attend to the dignity of the respective flag. The above-mentioned Minister of the other party shall support this recourse in the most efficacious and vigorous manner and if, from time to time, remedy to the inconvenience is refused or deferred, Their Majesties will in such case exercise the right of reprisal against the Power denying them execution of justice, and will immediately devise the most appropriate means to execute such reprisals.

ARTICLE 8

If the one or the other of the two contracting Parties, or both at the same time, should be attacked as a result of this convention which is not intended to give offense to any one, or for any other reason whatever relating thereto should be troubled, molested or attacked, they have resolved to unite their efforts to defend themselves, namely, Her Majesty the Empress of all the Russias will put in operation her maritime forces in concert with the other Courts which have concurred in the treaty of armed neutrality, His Majesty the Emperor furnishing troops and money according to the urgency of the case, for the sole end of procuring a satisfactory reparation both for the insult shown their flag and for the losses occasioned to their subjects.

ARTICLE 9

This convention is concluded and shall remain in force for the duration of the present war, and the obligations contracted by reason of the same shall serve as bases for all posterior treaties that may be entered into in the future, according to the events and on the occasion of new wars that might arise and upset the tranquillity of Europe. All else agreed upon herein shall be considered as permanent and invariable both as to matters pertaining to merchantmen and to maritime questions and shall have force of law for the determination of the rights of neutral nations.

ARTICLE 10

As it is the aim and object of the above-mentioned convention to safeguard the freedom of commerce and navigation, Their Majesties

the Emperor of the Romans and the Empress of all Russias have agreed to request all the Powers which until now have not done so to accede to the convention in whose advantages they may share, always and only on the ground of defense, and never of offense.

ARTICLE 11

In order that the Powers engaged in the war may not be ignorant of the force of the obligations contracted by the two Imperial Courts of Petersburg and Vienna, the high contracting Parties shall notify to them, in the most friendly manner, the measures adopted, measures which are the less hostile because their object is far from occasioning injury to anyone, tending solely to protect the commerce of the respective realms and peoples.

The present convention shall be ratified by the two contracting Parties, and the ratifications thereof exchanged in good and due form within a period of ten weeks, in faith of which, etc.

VIENNA, *July 10, 1781.*

Act of Accession of His Majesty the Emperor of the Romans to the Maritime Association, October 9, 1781¹

Joseph II, by the grace of God Emperor of the Romans, ever August, King of Germany and of Jerusalem, of Hungary and Bohemia, of Dalmatia, Croatia, Slavonia and Galicia, and of Lodomoria, Archduke of Austria, Duke of Burgundy and of Lorraine, Grand Duke of Tuscany, Grand Prince of Transylvania, Duke of Milan, of Mantua, of Parma, and Count of Hapsburg, of Flanders, of Tyrol, etc., etc., etc.

Having been amicably invited by Her Majesty the Empress of all the Russias to join with her in the consolidation of the principles of neutrality on the sea, looking to the maintenance of the freedom of maritime commerce and of the navigation of neutral Powers, which she has set forth in her declaration of February 28, 1780, transmitted in her name to the belligerent Powers, which principles are in substance :

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 257.

That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

That effects belonging to the subjects of the Powers at war shall be free on board neutral vessels, with the exception of contraband goods.

That nothing shall be considered contraband except the goods enumerated in Articles 10 and 11 of the treaty of commerce concluded between Russia and Great Britain on June 20, 1766.

That to determine what constitutes a blockaded port, none shall be deemed such except a port where the attacking Power shall dispose his vessels sufficiently near and in such a way as to render access thereto clearly dangerous.

Finally, that these principles shall serve as the rule in proceedings and judgments as to the legality of prizes.

And Her said Imperial Majesty of all the Russias having proposed to us to this end that we manifest by a formal act of accession, not only our complete adhesion to these same principles, but also our immediate cooperation in measures to ensure their execution, which we, on our part, shall adopt by contracting mutually with Her said Majesty the following engagements and stipulations, to wit:

(1) That the strictest neutrality shall be observed by both, that the prohibitions against commerce in contraband on the part of their respective subjects with any one of the Powers now at war, or who may hereafter enter the war, shall be most rigorously enforced.

(2) That if, in spite of all the care exercised to this end, the merchant ships of either of the two Powers should be taken or insulted by any of the vessels of the belligerent Powers, the complaints of the injured Power shall be supported in the most effectual manner by the other, and if justice should be refused upon these complaints, they shall continue to take counsel with each other as to the method most likely to secure it through just reprisals.

(3) That if it should happen that either of the two Powers or both of them, as a result of or in contempt of the present agreement, should be disturbed, molested, or attacked, they would then make common cause for their mutual defense and would work in concert to secure full and complete satisfaction, both for the insult to their flag and for the losses caused to their subjects.

(4) That these stipulations shall be considered by both as permanent and as being the rule whenever there may be occasion to pass upon the rights of neutrality.

(5) That the two Powers shall communicate in a friendly way their present mutual agreement to all the Powers that are now at war.

Since it is our wish, because of the sincere friendship which happily unites us with Her Majesty the Empress of all the Russias, as well as for the welfare of Europe in general and of our countries and subjects in particular, to contribute our share to the execution of views, principles, and measures, which are as salutary as they are in accord with the clearest conceptions of the law of nations, have resolved to accede thereto, and we accede formally by virtue of the present act, promising and binding ourselves, just as Her Majesty the Empress of all the Russias binds herself with respect to us, to observe, to execute and to guarantee all the points and stipulations aforesaid.

In faith whereof we have signed the present act with our own hand and have affixed thereto our seal.

Given at Vienna, October 9, 1781.

KAUNITZ RIETBERG

[L.S.] JOSEPH
ANT. SPIELMANN

**Act of Her Imperial Majesty of Russia accepting the Accession
of the Emperor of the Romans, October 19, 1781¹**

We, Catherine II, by the grace of God Empress and Autocrat of all the Russias, of Moscow, Kiovia, Wladimiria, Novgorod, Czarina of Casan, Czarina of Astrakhan, Czarina of Siberia, Lady of Plescau, and Grand Duchess of Smolensk, Duchess of Estonia, of Livonia, Carelia, Twier, Ingoria, Parmia, Wiatka, Bolgaria, and others, Lady and Grand Duchess of Lower Novgorod, of Czernigovia, Kasan, Rostor, Iaroslaw, Belo, Oseria, Udoria, Obdoria, Condania, Ruler of all the region of the North, Lady of Iveria, and Hereditary Princess and Sovereign of the Czars of Cartalinia and Georgia, as well as of Cabardinia, of the Princes of Czircassia, of Gorsky, and others: Having amicably invited His Majesty the Emperor of the Romans, King of Hungary and of Bohemia, to cooperate with us in consolidating the principles of neutral-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 260. The act of accession was exchanged for the act of acceptance on October 19th by the respective plenipotentiaries.

ity on the seas, tending to the maintenance of freedom of the maritime commerce and the navigation of neutral Powers, as set forth by us in our declaration of February 28, 1780, delivered in our behalf to the belligerent Powers, which principles state in substance:

That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

That effects belonging to subjects of the Powers at war shall be free on board neutral vessels, with the exception of contraband goods.

That nothing shall be considered as contraband except the goods specified in Articles 10 and 11 of the treaty of commerce concluded between Russia and Great Britain on June 20, 1766.

That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have disposed its vessels sufficiently near as to render access thereto dangerous.

Finally, that these principles shall be regarded as the rule in proceedings and judgments as to the legality of prizes.

And His said Imperial and Royal Apostolic Majesty having consented, for this purpose, to manifest by a formal act of accession, not only his complete adhesion to the said principles, but also his immediate cooperation in the measures to ensure their execution, which we shall adopt on our part, mutually contracting with His said Imperial and Royal Apostolic Majesty the following engagements and stipulations, to wit:

(1) That both parties shall continue to observe the strictest neutrality and shall see to the rigorous execution of the prohibitions against commerce in contraband on the part of their respective subjects with any of the Powers already at war and that may hereafter enter therein.

(2) That if in spite of the care exercised to this end merchant ships of either of the two Powers should be taken or insulted by any vessels of the belligerent Powers, the complaints of the injured Power shall be supported in the most effectual manner by the other, and if justice is refused on these complaints, they shall consult with each other immediately as to the best method of securing justice through just reprisals.

(3) That if either or both of the two Powers, as the result of or in contempt of the present agreement, should be disturbed, molested, or attacked, they shall then make common cause for their mutual defense, and shall work in concert to secure full and complete satis-

faction, both for the insult to their flag and for the losses suffered by their subjects.

(4) That these stipulations shall be considered by both sides as permanent and as constituting the rule whenever there is occasion to pass upon the rights of neutrality.

(5) That the two Powers shall communicate in a friendly way their present mutual agreement to all the Powers now at war.

As a result of the sincere friendship that happily unites us with His Majesty the Emperor, as well as for the welfare of Europe in general, and of our countries and subjects in particular, we formally accept by virtue of the present act the accession of His Majesty the Emperor of the Romans, King of Hungary and of Bohemia, to the views, principles and measures, as salutary as they are in accord with the most self-evident conceptions of the law of nations, promising and solemnly binding ourself, just as His Majesty the Emperor binds himself with us, to observe, to execute, and to guarantee all the points and stipulations aforesaid.

In faith whereof we have signed the present act and have hereto affixed our seal.

Given at St. Petersburg, October 19, 1781, and the twentieth year of our reign.

[L.S.] CATHERINE
COUNT JOHN D'OSTERMANN

Prussian Declaration and Ordinance concerning Navigation, November 3, 1781¹

His Royal Majesty the King of Prussia has indeed, by his first thorough-going declaration of April 30 of the present year already sufficiently acquainted every one with the fact that during the present war His Majesty intends to have a strict neutrality observed and navigation of his subjects so conducted that in availing themselves of their natural freedom, navigation may not be misused to such injury of the belligerent Powers as would warrant the latter, for good reasons, to

¹Translation. German text at Martens, *Recueil de Traités*, vol. 3, p. 290.

complain. As it is, however, being said publicly and in some localities complaint is being made, that foreign ships, even ships belonging to the belligerent nations make use of the royal flag, and under its protection carry on an illicit trade, His Royal Majesty declares solemnly, in consequence, that the use of his flag has been granted to no one and that no passes will be issued to any one, except to his veritable and true subjects who as such are really residing in his lands and are owners of houses, property and possessions, and that accordingly, if other and foreign shippers, such as are not provided with Prussian passes, make use of the Prussian flag which His Majesty can not prevent on the open sea, His Majesty will not afford them either protection or assistance, but leave them to their own fate. His Royal Majesty can therefore not be held responsible for such use of the Prussian flag, which His Majesty has not authorized and can not readily prevent; and His Majesty expects therefore from the sense of justice of the belligerent Powers that they will not hold the veritable Prussian sea-farers accountable for such use of his flag, nor make them suffer therefor.

In view of the fact that safe navigation and observance of strict neutrality do not depend so much upon the flag as upon the genuine passes which sea-farers, to establish their identity, must secure from their national authorities, therefore, to obviate any and every possible misuse, His Royal Majesty directs and commands herewith, earnestly and strictly, all his subjects who carry on navigation and maritime trade, that, if they intend to send forth ships and ship cargoes to distant seas, lakes, coasts and regions of the earth, they no longer shall, as customary hitherto, apply for passes, to magistrates or subordinate boards, but at Berlin, to the royal Department for Foreign Affairs where they shall be supplied with passes under the royal seal, provided that they have in advance secured the customary bills of lading and statements regarding the ship's cargo, together with dependable proof showing that the ship out-fitters and owners all of whose names must be stated specifically, are veritable and real royal Prussian subjects, authenticated by attestations from the magistrates and war and domain boards of each province, and thus have qualified themselves to receive a royal passport. From this ordinance remain excluded those Prussian shippers navigating in the Baltic Sea and not outside the Oere-sound and the Great and Lesser Belt; to save time, these navigators may secure passes from the hitherto customary places, and those who engage in short trips in the North Sea from the

ports of East Friesland, to the ports of Great Britain and the United Netherlands, and for want of time and because of the great distance and inconsiderable cargoes can not conveniently secure passes from Berlin, may as hitherto apply for and receive passes from the magistrate of the city of Emden and from the royal war and domain boards of the principality of East Friesland under the proper supervision of the latter.

As this ordinance is made known for the information and observance of all royal Prussian subjects, in all other respects, the first royal declaration of April 30 is to be observed and is hereby renewed and confirmed, so that both royal ordinances shall serve as prescription and line of conduct to the royal subjects who engage in navigation and maritime commerce.

Given at Berlin, November 3, 1781.

By special order of His Royal Majesty.

FINKENSTEIN

E. F. v. HERZBERG

Detailed Elucidation of the Prussian Ordinances of April 30 and November 3, 1781, concerning Commerce and Navigation, December 8, 1781¹

Through His Royal Majesty's ordinances of April 30 and November 3 of this year, the royal subjects have already been advised in what manner, for their greater security, they should organize their navigation and maritime commerce; in view of the fact, however, that certain doubts still exist and certain questions have arisen in regard thereto, therefore, in order to remove these doubts and dispose of these questions, in the name and on the part of His Royal Majesty, the following is additionally established, ordered and published for the guidance of royal Prussian subjects, engaging in navigation and maritime commerce:

ARTICLE 1

It is self-evident that, since Prussian ships which put to sea before the issuance of the ordinance of November 3, could not have pro-

¹Translation. German text at Martens, *Recueil de Traités*, vol. 3, p. 293.

vided themselves with the court passes prescribed therein by the royal Ministry for Foreign Affairs, the lack of such passes can not accrue to their disadvantage in any courts of justice nor in any other places, and that the hitherto customary passes with which they put to sea must retain their force and validity and ensure those ships up to the time of their return to Prussian ports. In order, however, still further to obviate all difficulties, it is hereby established, that the necessity of securing court passes from Berlin direct, shall go in force, beginning only with January 1, 1782, so that every one may have sufficient time to procure such passes.

ARTICLE 2

It remains established that small ships not carrying more than 100 tons burthen, as well as such as navigate only in the Baltic and North Sea, and not outside of the channel separating France and England, need not secure their passes from Berlin if they do not find it convenient to do so, but at their pleasure as hitherto, in order to save time, from the admiralties and war and domain boards of each province, as well as from the magistrates of the cities; and to that end, the said boards are hereby strictly exhorted, to exercise the greatest care, to prevent all misuse, and in strict compliance with the royal ordinances, that passes shall, in consequence, be issued to none but veritable and real royal subjects. By the declaration of November 3, it is solely his Royal Majesty's fatherly intention to procure the greater security through the maritime passes to be issued through His Ministry of Foreign Affairs which is best acquainted with the general state of affairs, to those Prussian ships which sail beyond the channel into the great ocean and engage in navigation and maritime commerce in those distant seas, countries and coasts, and to prevent, as far as possible, prejudicial incidents.

ARTICLE 3

As the skippers, before their ships have taken their full cargo on board, can not properly send to Berlin complete bills of lading of their cargoes, therefore, those requiring direct royal court passes, shall not be required to procure more than general certificates and vouchers from the admiralties, boards and magistrates regarding the ownership of the vessel, and in case the pass is also to indicate the cargo of the ship, then the quality of the cargo of which it consists, all of which will suffice to form judgment whether the cargo is free

and unprohibited, and whether thereupon the court may issue passes; on the other hand, the exact, specific and complete bills of lading and attestations regarding ship cargoes and the quantity of each article may be procured and solemnized in the manner hitherto customary, only in the place where the freight is taken on board, or in the same province, from the admiralties, boards and magistrates.

ARTICLE 4

To stimulate national commerce, the royal Prussian subjects have been advised by the ordinance of April 30, as far as possible, to carry on their navigation and maritime commerce for their own account and with their own merchandise, and in the ordinance of November 3 it is stated that to obtain the court passes, the required attestations should be provided, and that the ship out-fitters and the owners of the ships and cargoes should be royal Prussian subjects. Since, however, the former was mere advice, and the latter was required for the purpose of greater caution, royal Prussian subjects, who are provided with other proper maritime passes, are always free and unhindered, in virtue of the declaration referred to as of April 30, to carry merchandise and goods of foreign and even of the belligerent nations which according to the rights and usages of the peoples and of the second article of the declaration of April 30, are permitted and unprohibited, to regions and places not besieged or closely blockaded, and in consequence, according to the principles accepted and published by His Royal Majesty and his high authorities, royal Prussian subjects will not in such cases fail of His Majesty's protection and assistance, all of which, in order to remove all misinterpretation of the ordinance of November 3, is hereby declared.

ARTICLE 5

The commanders and officials of Prussian ships when landing in ports and places where royal consuls reside, shall submit their maritime passes to the latter and have it certified by them that the ships are still possessed of such passes as were issued to them.

ARTICLE 6

The said commanders will do well to have with them on board ship the royal declarations and ordinances of April 30 and November 3

together with the present explanatory ordinance and their passes, on the one hand, to be guided thereby, and on the other, if necessary and serviceable, to present their orders and thus be able to prove their identity. This ordinance and declaration, as well as the declarations of April 30 and November 3 which are renewed and at the same time interpreted by this present one serves especially as guidance for the royal Prussian subjects who engage in navigation and maritime commerce. If under this declaration and ordinance they should nevertheless commit some error and not be provided with the required passes, the commanders of the armed ships of the belligerent nations shall not be entitled either to stop or capture them on that account, provided they have not acted contrary to the laws of neutrality and of nations accepted by His Majesty, but shall be answerable for such conduct to His Royal Majesty alone.

Given at Berlin, December 8, 1781.

By special command of His Royal Majesty.

E. F. V. HERZBERG
FINKENSTEIN

Convention between Russia and Portugal for the Maintenance of the Freedom of Neutral Navigation and Commerce, July 13, 1782¹

Her Imperial Majesty of all the Russias having invited Her Majesty the Queen of Portugal to cooperate with her in the consolidation of the principles of neutrality on the sea and in the maintenance of freedom of the maritime commerce and the navigation of neutral Powers, in conformity with her declaration of February 28, 1780, transmitted in her name to the belligerent Powers; the Queen, because of the sincere friendship uniting Her Imperial Majesty to Her Most Faithful Majesty, as well as for the interest of Europe in general and of her countries and subjects in particular, wishes to contribute her share to the execution of the principles and measures, which are as salutary as they are in accord with the clearest conceptions of the law of nations. And therefore she has determined to appoint, in concert with Her Majesty the Queen of Portugal, plenipotentiaries, and to

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 263.

instruct them to conclude a convention, the spirit and content of which shall, in all respects, be in accord with these same intentions.

To this end Their said Majesties have chosen, appointed, and authorized, Her Imperial Majesty of all the Russias, John Count d'Ostermann, her Vice Chancellor, Privy Councilor, Senator, and Chevalier of the Orders of St. Alexander Nevsky and of St. Anne; Alexander Bezborodko, Major General of her Armies, Member of the Department of Foreign Affairs, and Colonel Commanding the Kiovia Regiment of Militia of Little Russia; and Pierre de Bacounin, her Councilor of State, Member of the Department of Foreign Affairs, and Chevalier of the Order of St. Anne: and Her Majesty the Queen of Portugal, Francis Joseph d'Horta-Machado of her Council, and her Minister Plenipotentiary at the Imperial Court of Russia; who after having exchanged their full powers, found to be in good and due form, have agreed on the following articles:

ARTICLE I

Her Majesty the Empress of all the Russias and Her Most Faithful Majesty, convinced of the solidity and the indisputable self-evidence of the principles set forth in the aforesaid declaration of February 28, 1780, which may be reduced in substance to the five following points:

(1) That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That effects and merchandise belonging to the subjects of the Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

(3) That nothing shall be considered as such except the goods enumerated in Articles 10 and 11 of the treaty of commerce concluded between Russia and Great Britain on June 20, 1776.

(4) That to determine what constitutes a blockaded port, none shall be considered as such except a port where the attacking Power shall have disposed a proportionate number of vessels near enough to make access thereto dangerous.

(5) Finally, that these principles may serve as the rule in proceedings and judgments as to the legality of prizes.

Their Majesties declare that, not only do they fully adhere to the same principles, but that on all occasions they will cooperate effectually to maintain them in all their force and effect, and that they will see to their strict enforcement.

ARTICLE 2

The present convention shall not, in any respect, impair the force of treaties now existing between the Court of Russia or of Portugal and any other Court of Europe whatsoever. But those treaties and the stipulations therein contained shall continue to have the same binding force on both parties as in the past, and this convention can never invalidate them, still less infringe upon them.

ARTICLE 3

The high contracting Powers shall continue to observe the strictest neutrality and shall see to the most scrupulous enforcement of the prohibitions against commerce in contraband on the part of their respective subjects with any one of the Powers now at war or which may hereafter enter into the war, including specifically under the head of contraband those goods which in the aforesaid Articles 10 and 11 of the treaty of commerce, concluded between Russia and Great Britain on June 20, 1766, are considered as such.

ARTICLE 4

If, in spite of the care exercised to this end, Russian or Portuguese merchant ships should be taken or insulted by any vessels of the belligerent Powers, the complaints and representations of the injured Power shall be supported in the most effectual manner by the other. And if, contrary to all expectation, justice should be refused on these complaints, they shall continue to take counsel with each other as to the method that is best calculated to secure indemnification through just reprisals.

ARTICLE 5

If either of the two Powers or both of them should, as a result of or in contempt of the present convention, be disturbed or molested, then they shall make common cause for their mutual defense, and shall work in concert in order to secure full and complete satisfaction, both for the insult to their flag and for the losses caused to their subjects.

ARTICLE 6

The present stipulations shall be considered by both Parties as permanent and as constituting the rule whenever there is occasion to pass upon the rights of neutrality.

ARTICLE 7

The Powers shall communicate in a friendly way their present mutual agreement to all the Powers that are now at war.

ARTICLE 8

The present convention shall be ratified by the two contracting parties, and ratifications thereof shall be exchanged within four months from the day on which it is signed, or sooner if possible.

In faith whereof we, the plenipotentiaries, by virtue of our full powers, have signed and have hereto affixed the seals of our arms.

Done at St. Petersburg, July 13, 1782.

COUNT JOHN D'OSTERMANN	[L.S.]
ALEXANDER DE BEZBORODKO	[L.S.]
PIERRE DE BACOUNIN	[L.S.]
FRANC. JOSEPH D'HORTA MACHADO	[S.L.]

**Austrian Netherlands Ordinance concerning Maritime Regulations,
December 12, 1782¹**

Joseph, etc., etc. The protection that we have constantly given to the commerce and navigation of our subjects in the Netherlands requiring that we have accurate knowledge of all the vessels that belong to our said subjects and that sail under the flag of this country, and that no abuse of this flag be tolerated nor of ship's registers pertaining thereto, we have, at the instance of our very dear and well-beloved sister, Maria Christina, Princess Royal of Hungary and Bohemia, Archduchess of Austria, etc., etc., and of our very dear and well-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 297.

beloved brother-in-law and cousin, Albert Casimir, Prince Royal of Poland and Lithuania, Duke of Saxe Teschen, etc., etc., our Lieutenant Governors and Captains General of the Netherlands, etc., ordered and decreed, and hereby order and decree the following articles:

ARTICLE 1

All of our subjects in the Netherlands who own sea-going vessels are required to furnish a declaration, signed by them, within six weeks after publication of the present ordinance, **free of carrier's charge**, to the Admiralty office at Ostend, Bruges, or Nieuport, respectively, according to the city where the vessels in question procured their ship's registers, and in the case of vessels whose registers were obtained in other cities of this country, the declaration shall be made to the office at Ostend. These declarations must contain (1) the name of the vessel, (2) its character and capacity in nautical tons, (3) whether it was built in this country or in a foreign country, and in the latter case indicate, so far as possible, in what country it was built, where it was purchased, and furnish evidence of the purchase and present ownership of the vessel, (4) the name of the captain commanding it, (5) in what port or waters its owners know or presume it to be now, (6) the date and place where the ship's register was procured with which the vessel is furnished; all this under penalty of a fine of 200 florins for every vessel whose declaration shall not have been made within the prescribed time.

ARTICLE 2

With regard to vessels which our subjects shall acquire after the publication of the present ordinance, they shall be required, before these vessels may put to sea, to procure registers in the usual form, which must be certified at one of the Admiralty offices, at Ostend, Bruges, or Nieuport, respectively, under penalty of invalidity. The owners shall at the same time deliver a separate declaration, containing (1) the name of the vessel, (2) its character and tonnage, (3) whether it was built in this country or in a foreign country, indicating, in the latter case, in what country it was built, where it was purchased, producing evidence of the purchase, (4) the name of the captain who is to command the vessel, (5) in what port it is at present; and the certificate shall state that the present article has been complied with, all under the same penalty decreed in the preceding article.

ARTICLE 3

The owners of vessels who shall sell or transfer, or have other persons sell or transfer, vessels belonging to them, must, within fifteen days at the outside, give a declaration thereof to one of the offices of the Admiralty, at Ostend, Bruges, or Nieuport, respectively, according to the city where the ship's registers may have been delivered, and to the Admiralty office at Ostend, if the registers were furnished in any other city of this country. They must return to the Admiralty office the registers and other papers that they shall receive from the magistrates for the vessels sold or transferred: which return must be made at the same time as the declaration, if the sale or transfer is made in the ports or places of this country, and within one month, or other period to be determined by the Admiralty officials, if the sale is made in foreign ports, under penalty of confiscation of the value of the vessels and 4,000 florins fine, one-third of the amount confiscated and of the fine to go to the informer.

ARTICLE 4

Those who shall be convicted of having lent their name to conceal or disguise foreign ownership of a vessel, in whole or in part, by obtaining registry in this country, or those who shall have yielded, lent, or allowed the use of their registers for other vessels than that for which the register was originally furnished, those who shall have altered or changed in any manner whatsoever their registers, those who, navigating under the flag of this country, shall at the same time be supplied with and make use of a foreign register, or who shall make use of foreign passes, passports, or other papers for their vessel, shall for each offense be liable to a fine of 6,000 florins, as well as every one of our subjects who shall have cooperated or participated therein; and one-third of this fine shall be paid to the informer. Cases of this character previous to the publication of this ordinance shall remain subject to the usual penalties.

We decree, etc.

Given in our city of Brussels the 12th day of the month of December in the year of Grace 1782, the 12th of our reign in the Roman Empire, and the 3rd of our reign in Hungary and Bohemia.

By the Emperor and King in Council.

Act of February 21, 1783, by which His Majesty the King of the
Two Sicilies accedes to the System of Armed Neutrality¹

Her Imperial Majesty of all the Russias, inspired by a generous desire to consolidate the true principles of the right of neutrals on the sea, calculated to maintain the freedom of their navigation and maritime commerce, as set forth in her declaration of February 28, 1780, transmitted to the Powers then at war, has observed with the greatest satisfaction how widely the successive adhesion of different Powers to the same principles has extended their effect. For this reason and because of her just confidence in the friendship of His Sicilian Majesty, she has determined to invite him likewise to strengthen by his co-operation in a work of so great importance; and His said Majesty, recognizing this action to be a mark of friendship as well as a feeling of just confidence in him, in the belief that the said principles are entirely in accord with those which he, like his August Father, has constantly followed, ever since the restoration by him of the independent existence of the Monarchy of his Kingdoms, and such as they are clearly recognized in his treaties with Sweden in the year 1742, with Denmark in 1748, with the States-General of the United Provinces in 1753, the only treaties concluded since the period when the said Kingdoms ceased to belong to other sovereignties, has not hesitated to reply with eagerness.

To this end Their Majesties have deemed it wise to conclude a formal act, in which the said principles shall be set forth, and have appointed as their plenipotentiaries, to wit: Her Imperial Majesty of all the Russias, John Count d'Ostermann, her Vice Chancellor, Privy Councilor, Senator and Chevalier of the Orders of St. Alexander Nevsky, of St. Wladimir of the First Class, and of St. Anne; Alexander de Bezborodko, Major General of her Armies, Member of the College of Foreign Affairs, Colonel Commanding the Kiovia Regiment of Militia of Little Russia, Chevalier of the Order of St. Wladimir of the First Class; Pierre de Bacounin, her Councilor of State, Member of the College of Foreign Affairs, Chevalier of the Order of St. Wladimir of the Second Class and of the Order of St. Anne; and His Majesty the King of the Two Sicilies, Don Muzio Gaëta, Duke of St. Nicholas, his Gentleman of the Chamber and his Minister Plenipotentiary at the Imperial Court of Russia; who, having exchanged their full powers,

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 267. Ratifications exchanged at St. Petersburg, July 1, 1783.

found to be in good and due form, have agreed to the following articles:

ARTICLE 1

Her Majesty the Empress of all the Russias and His Majesty the King of the Two Sicilies, convinced of the solidity and of the incontestable self-evidence of the principles set forth in the aforesaid declaration of February 28, 1780, which may be reduced in substance to the five following points:

(1) That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That effects and merchandise belonging to the subjects of the Powers at war shall be free on board neutral vessels, with the exception of contraband of war.

(3) That nothing shall be considered as such except the merchandise enumerated in Articles 10 and 11 of the treaty of commerce and navigation concluded between Russia and Great Britain on June 20, 1766.

(4) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have disposed a proportionate number of vessels sufficiently near to make access thereto clearly dangerous.

(5) Finally, that these principles, which shall serve as the rule in proceedings and judgments as to the legality of prizes, shall not impair the force of treaties now existing between Their Majesties and other Powers, but they shall give them additional force.

Their said Majesties declare that, not only do they fully adhere to the same principles, but that on all occasions they will cooperate effectually to maintain them in their full force and effect, and will see to their most scrupulous execution.

ARTICLE 2

In any war in which the high contracting Parties, observing absolute neutrality, shall not take part, they shall see to the strictest enforcement of the prohibition of commerce in contraband on the part of their respective subjects with any one whatsoever of the Powers now at war, or which may hereafter enter into the war.

ARTICLE 3

Contraband of war, in which commerce neutrals are forbidden to engage, shall be understood in accordance with the terms of the treaties existing between Russia and Great Britain concluded in 1766, as well as in accordance with the terms of the treaties in force between the Two Sicilies and Denmark, Sweden, and Holland.

ARTICLE 4

If, in spite of all their care to this end, merchant vessels of either of the two Powers, should be taken or insulted by any vessels of the belligerent Powers, the complaints of the injured Power shall be supported in the most effectual manner by the other; and if justice should be refused on these complaints, they shall continue to take counsel with each other as to the method best calculated to secure for their subjects full indemnification.

ARTICLE 5

If either of the two Powers or both of them, because of or in contempt of the present agreement, should be disturbed, molested, or attacked, they shall then make common cause for their mutual defense, and shall work in concert so as to secure full and complete satisfaction, both for the insult to their flag and for the losses caused to their subjects.

ARTICLE 6

These stipulations shall be considered by both Parties as permanent and as constituting the rule whenever there is occasion to pass upon the rights of neutrals.

ARTICLE 7

The two Powers shall communicate in a friendly way their present mutual agreement to all the European Powers in general.

ARTICLE 8

The present act shall be ratified by the two contracting Parties, and ratifications thereof shall be exchanged within four months from the date of the signing thereof, or sooner if possible.

In faith whereof, we, the plenipotentiaries, by virtue of our full powers, have signed and affixed hereto the seals of our arms.

Done at St. Petersburg, February 10, 1783.¹

[L.S.] COUNT JOHN D'OSTERMANN

[L.S.] ALEXANDER DE BEZBORODKO

[L.S.] PIERRE DE BACOUNIN

[L.S.] MUZIO GAËTA DUKE OF ST. NICHOLAS

Letter from Mr. Merry, British Chargé d'Affaires at the Court of Denmark to Count Bernstorff, Danish Secretary of State for Foreign Affairs, regarding the Right of Visitation at Sea²

COPENHAGEN, *April 10, 1800.*

The importance which the British Government must necessarily attach to the event which took place in the month of December last in the vicinity of Gibraltar, between some frigates of the King and the frigate of His Danish Majesty named the *Haufenen*, commanded by Captain Van Dockum, and the orders which have been in consequence sent me by my Court relative to this affair, impose on me the painful duty of repeating to you in writing the complaint on this subject, which I had the honor of representing to you by word of mouth, in the audience which you were so kind as to grant me for that purpose about three days ago. The facts upon which the question turns in this business are in themselves very simple, and I believe such as we are already agreed upon; that is to say, the English frigates met the Danish frigate upon the high sea escorting a convoy. The English commander, judging it proper to avail himself of the right of visiting this convoy, sent on board the Danish frigate to demand from the captain his destination. The latter having answered that he was then

¹February 21, 1783, new style.

²*Collection of State Papers*, vol. 10, p. 22. In the differences which have arisen between Denmark and England on the subject of the right of visitation by sea, the details of the affair of the first Danish frigate taken by the English in the neighborhood of Gibraltar have never been officially published by the English Government. The above letter, in which these details are contained, is extracted from a French paper.

going to Gibraltar; the other replied, that if he was going to stop at Gibraltar he would not visit his convoy; but in case he should not cast anchor in that port, that the visit would certainly take place. Captain Van Dockum then informed the officer who had come on board, that he would in such case make resistance. Upon this the English captain made the signal to examine the convoy. The boat of the frigate, the *Emerald*, prepared to execute this order; some musketry was fired down from the Danish frigate; and one of the English sailors was thereby severely wounded. This frigate also took possession of a boat of the English frigate, the *Flora*, and did not release it until after the English captain had made Captain Van Dockum understand, that, if he did not surrender it immediately, he should commence hostilities. The Danish frigate then repaired with its convoy to the Bay of Gibraltar. There some discussions took place upon this subject between Lord Keith, admiral and commander of the naval forces of His Britannic Majesty in the Mediterranean, and Captain Van Dockum, whom Lord Keith thought proper to consider as personally responsible, and guilty of the injury done to a subject of his King, thinking it impossible that this captain could be authorized to act in such a manner by the instructions of his Court. To clear up the business, the English admiral sent an officer to Captain Van Dockum, praying that he would show him these instructions, and explain their nature. The latter refused to let the admiral see the instructions, alleging that he was forbid to do so; but he told the officer that they imported that he should not permit visitation of his convoy, and that in firing upon the King's boats he only fulfilled his orders. The captain himself afterwards made a like answer, and upon his word of honor, in conversation with Lord Keith, in presence of the Governor of Gibraltar; but he promised at the same time to surrender himself before a judge, and to give notice of his appearance; and upon this promise he was told he might return on board. Upon his having entered his boat, he sent a letter to the admiral, in which he refused to give the notice required. These discussions were terminated by a declaration which Lord Keith made to Captain Van Dockum, that, "if he neglected to submit, and should thereby attempt to withdraw himself from justice, the affair should be represented to his Court."

This, Count, is the statement of the facts which have occasioned the complaint which I am charged to lay before the Danish Government. I flatter myself that you will find it accurate, and conformable

to the correspondence between Lord Keith and Captain Van Dockum, in your possession, as you have done me the honor to inform me.

The right of visiting and examining merchant vessels on the high sea, of whatever nation they may be and whatever their cargoes or destinations, the British Government regards as the incontestable right of every belligerent nation; a right founded upon the law of nations, and which has been generally admitted and acknowledged. It follows of consequence, that the resistance made to this visitation by the commander of a ship of war belonging to a friendly Power, must necessarily be considered an act of hostility, such as he is persuaded could not be enjoined by the commanders of ships of war of His Danish Majesty by their instructions. His Britannic Majesty has therefore no doubt of the displeasure which His Danish Majesty will feel on learning this violent and indefensible procedure of an officer in his service; and the King is persuaded of the promptitude with which His Danish Majesty will make to His Majesty the formal disavowal and apology which he has so just a right to expect from him in the present case, with a reparation proportioned to the nature of the offense committed.

I am specially charged, Count, to make of you a demand of this disavowal, apology, and reparation.

The confidence which I have in the acknowledged justice of His Danish Majesty, induces me to hope that this simple and friendly representation will suffice to obtain it with the promptitude which so important a case requires; but I ought not at the same time to conceal from you, that however great and sincere may be the desire of the King my master to maintain and cultivate the closest harmony and friendship with the Court of Denmark, nothing will induce His Majesty to depart from this just demand.

I have the honor to be, etc.,

(Signed) ANT. MERRY

**Reply of Count Bernstorff to Letter of Mr. Merry, regarding the
Right of Visitation at Sea, April 19, 1800¹**

The undersigned, Secretary of State for Foreign Affairs, having laid before the King, his master, the representations which Mr. Merry did him the honor to address to him under date of the 10th instant, with regard to an encounter which took place in the month of December last between a Danish frigate and certain English frigates, has just been authorized to make the following reply thereto.

In the first place, it should be observed that the version of the affair as set forth in Mr. Merry's note is not absolutely in accord with the account given by the commander of the King's frigate; and, although the difference between the reports of this affair bears upon minor points, we can not refrain from calling attention to it, inasmuch as the account on which the British complaints are founded seem to compromise the honor and the good faith of Captain Van Dockum.

According to this account, that officer is alleged to have given his promise to Lord Keith to appear personally before an English court, and to have broken his word from the moment he returned to his vessel, while it is stated in the report of the said Captain that he constantly and positively declared, as became him, "that, being vested with the command of one of the King's war-ships, he could be responsible for his conduct to his sovereign alone."

The reports on both sides agree for the rest on the principal fact. The question involved is "whether the English frigates were in the right in attempting, or the commander of the Danish frigate in preventing visitation of the convoy under the escort of the latter."

Custom and treaties, it is true, have conferred upon the belligerent Powers the right to have their war-ships or privateers visit unconvoyed neutral vessels. But since this right is not a natural but a purely conventional one, its effect can not, without injustice or lawlessness, be arbitrarily extended beyond what has been agreed upon or granted. But none of the independent maritime Powers of Europe has ever, so far as the undersigned is aware, recognized the right to visit neutral vessels under escort of one or more war-ships, and it is evident that they could not do so without degrading their flags and renouncing an essential part of their own rights.

Far from acquiescing in this hitherto unknown pretension, the ma-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 130.

majority of these Powers have, since there has been question of this alleged right, deemed it their duty to set forth the opposite principle in their conventions relating to matters of this nature, as is evidenced by a great number of treaties concluded between the most important Courts of Europe.

This distinction made between convoyed [and unconvoyed] vessels is as just as it is natural, for the former should not be placed in the same category as the latter.

The visiting by privateers or war-ships of belligerent Powers of unconvoyed neutral vessels is founded on the right to ascertain the flag to which they belong and to examine their papers. It is merely a question of determining whether they are neutral and whether their papers are in conformity with requirements. The papers of these vessels having been found to be according to rule, no further search may legally be undertaken. Hence it is the authority of the Government in whose name these documents have been drawn up and issued that gives the belligerent Power the necessary assurance.

But the neutral Government, by convoying with its war-ships the commercial vessels of its subjects, gives belligerent Powers a guarantee that is more authoritative and still more positive than is that furnished by the documents with which these vessels are furnished; and it could not, without dishonor to itself, admit any doubts or suspicions on this point, for they would be as injurious to it as they would be unjust on the part of those who should entertain or manifest them.

If the principle should be admitted that the convoy given by a sovereign did not guarantee the vessels of his subjects from search by foreign war-ships or privateers, it would follow that the most formidable squadron would not have the right to save the vessels entrusted to its protection from search by the weakest privateer.

But it can not be reasonably presumed that the English Government, which has always, and for the best of reasons, shown itself to be jealous of the honor of its flag, and which in the naval wars in which it has not taken part has vigorously maintained the rights of neutrality, would, if the case arose, consider itself bound to suffer such an affront; and the King has too great confidence in His Britannic Majesty's equity and integrity to harbor the suspicion that it can be his desire to arrogate to himself a right which, under similar circumstances, he would not recognize as belonging to any other independent Power.

It would seem to be sufficient to apply to the act in question the

necessary deduction from these considerations in order to demonstrate that the commander of the King's frigate, in resisting an act of violence, which he had no reason to expect, only did his duty, and that it was the English frigates which committed an act in violation of the rights of a neutral sovereign friendly to His Britannic Majesty.

The King hesitated to make formal complaint, so long as he looked upon the affair as merely a misunderstanding that could be cleared up by friendly explanations on the part of the commanders of the respective naval forces kept by the two Governments in the Mediterranean; but finding himself, with great regret, disappointed in this hope, he must needs insist upon the reparation which is due him and which the justice and friendship of His Britannic Majesty would seem to assure to him.

(Signed) C. BERNSTORFF

Note from Count Wedel-Jarlsberg, Envoy Extraordinary of His Danish Majesty, to Lord Grenville, British Secretary of State for Foreign Affairs, relative to the Capture of the Frigate "Freya," London, July 29, 1800¹

The undersigned, Envoy Extraordinary of His Danish Majesty, has the honor to bring to the attention of His Royal Majesty the following facts:

On the 25th instant His Danish Majesty's frigate *Freya*, commanded by Captain Krabbe, which was convoying six vessels, was encountered at the entrance to the Channel by six English war-ships under the command of Captain Baker. An officer from one of these ships was sent on board the *Freya*, informed himself of its destination, etc., and returned with the customary information. But shortly after he came back with orders to visit the convoy. Permission to do so was refused him. In the meantime the other frigates approached, and one of them fired a shot at one of the vessels of the convoy, which was answered by a shot from the Danish frigate across the bows of the vessel that

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 133.

began the attack. The English commander's frigate came nearer and repeated his demand, which was refused by the Danish commander, who protested "that the convoy had not on board any article of contraband," and declared "that, in conformity with his instructions, he would not allow any boat to approach the convoy." A boat was sent notwithstanding, and the *Freya* fired a shot to turn it back, but did not hit it. The English commander immediately fired a broadside; but it was not until the sight of two wounded men convinced him that effective hostilities had been begun that he returned the broadside, repelled force with force, and continued the combat with the said flag-ship and three others, until he found himself obliged to yield to the superior strength of his assailants and to lower his flag after having honorably defended and upheld it to the bitter end. The English thereupon took possession of the Danish frigate, held Captain Krabbe prisoner aboard the flag-ship, and brought him with the prize and convoy to the Dunes.

Thus in the midst of constant and secure peace between two friendly and allied nations there has occurred an unheard-of provocation, the enormity of which is sealed with the innocent blood of the subjects of both.

The affair that has just taken place is a direct attack on the independence of Denmark, a violation of the most sacred rights of the sovereign, and an act of aggression so violent that it would give rise to the most serious consequences, if it could be presumed that the instructions of the British Government had authorized such extreme action of a character so incompatible with the friendship existing between the two Courts.

But, in spite of the unfortunate impression created by the facts mentioned, it is a great consolation to the undersigned to feel that the English officers merely overstepped their instructions through over-eager and ill-advised zeal, and that therefore His Britannic Majesty will not hesitate, in accordance with his well-known sentiments, to show his great indignation over the act and to give His Danish Majesty the most complete satisfaction.

It is under that reservation and while waiting for orders from his Court on this subject that the undersigned confines himself now to a ministerial demand for the prompt restitution of the frigate *Freya* and its convoy, and reparation at the expense of the British Government for all damage resulting from the hostilities mentioned.

His Excellency Lord Grenville, to whom the undersigned has the honor to address this note, will certainly share his just resentment of the aforesaid unfortunate incident and his hopes that satisfactory reparation for the offense may be made at once. The undersigned therefore hastens to request most urgently that his Excellency use his good offices to this end, and with the utmost confidence in his Excellency's just and equitable point of view, he has the honor to reiterate the assurance of his consideration and respect.

(Signed) WEDEL-JARLSBERG

**Reply of Lord Grenville to Count Wedel-Jarlsberg, July 30, 1800,
respecting the Capture of the Frigate "Freya"**¹

The undersigned, His Majesty's principal Secretary of State for Foreign Affairs, has had the honor to lay before the King the note which he received yesterday from Count Wedel-Jarlsberg, Envoy Extraordinary and Minister Plenipotentiary from the King of Denmark.

It was with the greatest surprise and concern that His Majesty received the first accounts of the transaction to which that note relates. Studiously desiring to maintain always with the Court of Copenhagen those relations of friendship and alliance which had so long subsisted between Great Britain and Denmark, His Majesty has, during the whole course of his reign, given repeated proofs of these dispositions, which he had flattered himself were reciprocally entertained by the Government of His Danish Majesty. And notwithstanding the expressions made use of in Count Wedel's note, His Majesty can not even yet persuade himself that it is really by the orders of the King of Denmark, that this state of harmony and peace has been thus suddenly disturbed, or that a Danish officer can have acted conformably to his instructions, in actually commencing hostilities against this country by a wanton and unprovoked attack upon a British ship of war, bearing His Majesty's flag, and navigating the British seas.

¹*Collection of State Papers*, vol. 10, p. 70.

The impressions which such an event has naturally excited in His Majesty's breast have received additional force from the perusal of a note, in which satisfaction and reparation are claimed as due to the aggressors from those who have sustained this insult and injury.

His Majesty, allowing for the difficulty in which all neutral nations were placed by the unprecedented conduct and peculiar character of his enemy, has on many occasions, during the present war, forbore to assert his rights, and to claim from the Danish Government the impartial discharge of the duties of that neutrality which it professed a disposition to maintain. But the deliberate and open aggression which he has now sustained can not be passed over in a similar manner. The lives of his brave seamen have been sacrificed, the honor of his flag has been insulted, almost in sight of his own coasts; and these proceedings are supported by calling in question those indisputable rights founded on the clearest principles of the law of nations, from which His Majesty never can depart, and the temperate exercise of which is indispensably necessary to the maintenance of the dearest interests of his empire.

The undersigned has, in all his reports to His Majesty, rendered full justice to the personal dispositions which he has uniformly found on the part of Count Wedel, to remove all grounds of misunderstanding between the two countries. He can not, therefore, now forbear to urge him to represent this matter to his Court in its true light, to do away with those false impressions, under which (if at all) a conduct so injurious to His Majesty can have been authorized; and to consult the interests of both countries, but especially those of Denmark, by bearing his testimony to the dispositions with which His Majesty's Government is animated; and by recommending to his Court, with all that earnestness which the importance of the occasion both justifies and requires, that these dispositions may, in so critical a conjuncture, find an adequate return; and that a speedy and satisfactory answer may be given to the demand which His Majesty has directed to be made in his name at Copenhagen, both of reparation for what is past, and of security against the repetition of these outrages.

In order to give the greater weight to His Majesty's representations on this subject, and to afford at the same time the means of such explanations respecting it, as may avert the necessity of those extremities to which His Majesty looks with the greatest reluctance, His Majesty has charged Lord Whitworth with a special mission to the

Court of Denmark, and that minister will immediately sail for his destination.

That Court can not but see in this determination a new proof of the King's desire to conciliate the preservation of peace with the maintenance of the fundamental rights and interests of his empire.

(Signed) GRENVILLE

July 30, 1800.

Reply of Count Wedel-Jarlsberg to Lord Grenville, London, August
2, 1800¹

The undersigned, Envoy Extraordinary of His Danish Majesty, confines himself to acknowledging the ministerial note of Lord Grenville, dated the 30th ultimo, in reply to his of the 29th. He immediately informed his Court thereof, as well as of the mission with which Lord Whitworth is charged to Denmark.

But pending the transfer to Copenhagen of the discussion of the hostilities committed, the undersigned hastens to repeat his urgent demand with regard to the restitution of the frigate *Freya*, in such condition that it can continue its voyage, and with regard to its convoy. Since the British Government, by means of superior forces, succeeded in making it impossible for His Danish Majesty's frigate to protect its convoy from the carrying out of an act that is contested and in dispute, and since both the frigate and its convoy were brought into an English port, where the searching of the vessels was effected without revealing any contraband article in their innocent cargoes, the undersigned is pleased to believe that the British Government will, by its acts, give the Government of Denmark conciliatory assurance that it is far from desiring to aggravate the difference by a continuation of hostile action, and, by restoring the vessels mentioned, show that it treats them differently from those captured from the enemy.

The undersigned begs Lord Grenville to be good enough to support his just demand with his good offices and to consider compliance

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 137.

therewith as paving the way for an explanation that will wipe out the bad impression of the past and ensure the continuance of the harmony which has been a source of such satisfaction and happiness to the sovereigns of the two nations.

(Signed) WEDEL-JARLSBERG

Reply of Count Bernstorff to Lord Whitworth, Copenhagen, August 16, 1800¹

The King learned with as much regret as surprise of the incident which has caused the detention of his frigate, the *Freya*, and of the convoy that was under its protection. His Majesty, however, far from presuming that the attack on the security of a convoy sailing under the protection and safeguard of his flag could have been premeditated, or that so unequal and so unexpected a fight could have been the result of an order emanating from the British Government. He saw in this unfortunate encounter nothing more than the act of an over-zealous commander of an English squadron, who made unwarranted use of his superiority in strength over a foreign vessel which was sailing in waters along the coast of a country between which and Denmark there exists bonds of friendship and alliance and was therefore unprepared for a hostile surprise.

But nothing can equal the astonishment of His Majesty in learning from the note which the undersigned had the honor of receiving from Lord Whitworth that the British Government, in refusing the satisfaction which is manifestly due, retorts with a demand against Denmark, imputing to it without scruple an act of aggression, which is disproved by a simple examination of the facts.

It is indeed a confusion of the clearest conceptions and an inversion of the most natural and least equivocal sense of things and words to hold that lawful resistance, provoked by a gratuitous attack upon the rights and honor of an independent flag, should be considered an act of aggression, and of premeditated aggression.

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 141.

Demonstration is superfluous when facts speak for themselves; and Denmark does not fear to appeal in this matter to the judgment of all the impartial Powers of Europe.

If it were possible to suppose that the King had any idea of attacking Great Britain or any hostile intentions against that country, His Majesty would not hesitate openly to disavow it; but no such possibility exists, and the English Government itself, if it weighs the circumstances calmly and without prejudice, could have no suspicion in this regard.

But even supposing that the commander of the Danish frigate had overstepped the limits of his duty and that the English Government was thereby warranted in demanding satisfaction, it still clearly follows from the nature of the case that this demand could not be made until after the frigate and its convoy had been released, Denmark clearly being, until that is done, the injured party, and consequently the only one who has grounds for complaint.

It is this preliminary demand to release without delay the King's frigate and the convoy under its protection, which Lord Whitworth is requested to transmit to his Court and to support with his good offices. He will be good enough to add the assurance that the King will eagerly accept any proposition compatible with the honor of his flag and the dignity of his crown, which tends to maintain harmony between the two Courts, as this always has been and always will be one of the principal objects desired and sought by Denmark.

The King does not deem it necessary to reiterate to His Britannic Majesty protestations of friendship on an occasion which has neither belied it nor placed it in doubt. Nor does His Majesty permit himself to ask for evidence of the friendship of his august ally. He merely appeals to the equity of a virtuous and upright sovereign, who surely does not believe that he will add to the glory of his reign or to the splendor of his power by an act of injustice toward him.

The undersigned, who has long been prepossessed in favor of Lord Whitworth, is pleased to have confidence in his personal sentiments and trusts that he may succeed in winning the confidence of Lord Whitworth.

(Signed) C. BERNSTORFF

Extract from the Reply of Lord Whitworth to Count Bernstorff¹

August 21, 1800.

The English Minister supports the principles which he had established in his first note, and says, that if the principle be once admitted, that a Danish frigate may legally guarantee from all search six merchant ships, it follows naturally that that same Power, or any other Power whatever, may, by means of the smallest ship of war, extend the same protection to all the commerce of the enemy in all parts of the world; it will only be necessary to find in the whole circle of the universe a single neutral State, however inconsiderable it may be, well disposed enough towards our enemies to lend them its flag, and to cover all their commerce without running the least risk; for when examination can no longer take place, fraud fears no discovery. In the note which the Count de Bernstorff has just transmitted, the undersigned perceives with pain, that, far from wishing to satisfy the just demand of the King his master, the Danish Government still persists in supporting, not only the principle upon which it founds its aggression, but also the right of defending it by means of arms. In this state of things, the undersigned has no other alternative than to perform strictly his duty, by insisting anew on the satisfaction which the King his master requires, and by declaring to M. de Bernstorff, that, in spite of his sincere desire to be the instrument of the reconciliation of the two Courts, he shall be obliged to leave Copenhagen with all the English mission in the space of a week, reckoning from the day of the signing of this note, unless, in the interval, the Danish Government shall adopt counsels more conformable to the interests of the two countries, and, above all, to those of Denmark, with whom His Majesty has constantly desired, and still desires, to live in terms of friendship and alliance. The undersigned, therefore, has the honor to repeat to the Count de Bernstorff, that he is enjoined to quit Copenhagen with the King's mission in a week, unless a satisfactory reply be given before the expiration of that term.

He requests the Count de Bernstorff to accept the assurances of his most distinguished consideration.

¹*Collection of State Papers*, vol. 10, p. 95.

Reply of Count Bernstorff to Lord Whitworth, Copenhagen,
August 26, 1800¹

The undersigned, having laid before the King his master the note which Lord Whitworth did him the honor to hand him on the 21st instant, has just been authorized to make the following reply.

His Majesty is extremely surprised to learn that Lord Whitworth attempts to base the continued detention of the frigate *Freya* and of its convoy on the principle that a neutral vessel which resists visitation by one or more armed vessels belonging to a belligerent Power renders itself, merely by this resistance, liable to confiscation. This principle, such as it is, quite generally though not universally recognized, applies only to unconvoyed merchant ships, which, not being considered as armed, can only expect security from the innocence of their voyage, the respect due their flag, and the genuineness of the documents with which they have been furnished by their Governments.

The extension of the application of this principle to resistance by a warship on behalf of vessels under its convoy, would be as arbitrary as it is novel, and absolutely contrary to the very nature of the principle mentioned.

If the British Government considers that it has authorities or proofs in support of its contention, Denmark must ask that it state them more specifically, in order to meet them with the authorities and proofs that have always appeared to the Danish Government to be so decisively in favor of its stand, as to determine its opinion in this regard, without its ever having had to sacrifice its conviction to its individual interests.

As to the general question, concerning the alleged right to visit neutral vessels under convoy, the undersigned must call attention to the contents of the note which he handed to Mr. Merry under date of April 19.

If Lord Whitworth believes that he has destroyed the force of the arguments set forth in that note by his observation that by means of the right guaranteeing from visit merchant ships which are under the escort of a warship, the least powerful neutral State would be able with impunity to cover with its flag illicit commerce, the undersigned begs to remark that a Government which would degrade itself to the point of lending its flag to such an act of fraud would thereby place itself beyond the pale of neutrality and consequently justify the belliger-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 145.

erent Power, to whose prejudice the said fraud had been committed, to take measures which, under ordinary circumstances, would not be permitted.

The State that neglects its duties undoubtedly exposes itself to the risk of losing its rights; but suspicion of base conduct would be as injurious to the Government which did not deserve it as it would be dishonoring to the Government which should advance such suspicion without grounds. Such a situation, however, could not exist between Denmark and Great Britain. The English Government are surely not ignorant of the fact that Danish officers in command of convoys are held personally responsible to see that the cargoes of the vessels belonging to these convoys do not contain articles prohibited by the rules of the law of nations or by treaties existing between Denmark and belligerent Powers; and it is easy to see that it would be incomparably more difficult to elude the vigilance of these officers than the search of those who should attempt to exercise on these vessels a right, which is as odious in principle as it is futile in its effect.

This essential difference between the principles of the two Courts bringing into this discussion special difficulties, there would appear to be a no more fitting way to remove them than to have recourse to the mediation of a third Power; and the King hesitates the less to propose to His Britannic Majesty the mediation of the Emperor of Russia, since that monarch, the friend and ally of both sovereigns, will certainly have nothing more at heart than to bring about their reconciliation and to prevent an unfortunate misunderstanding. The King will entrust his interest with the utmost confidence to this mediation; and His Majesty will eagerly adopt any proposals of His Majesty the Emperor of Russia tending to effect a settlement compatible with the honor of the two Courts.

The undersigned does not doubt that Lord Whitworth will see in this proposal fresh proof of the sincere moderation of the King and of his unalterable desire to keep the friendship of His Britannic Majesty. He begs him to be good enough to transmit it in this sense to his Court. The King would regret the more to see him depart, since His Majesty had regarded his mission as a pledge of the conciliatory intentions of the London Court and was pleased to believe that his personal sentiments would help to expedite a settlement, for which His Majesty has offered and still offers him the greatest facilities.

The undersigned has the honor to beg Lord Whitworth to accept renewed assurances of his most distinguished consideration.

(Signed) C. BERNSTORFF

Reply of Lord Whitworth to Count Bernstorff¹

August 27, 1800.

Lord Whitworth requests the Count de Bernstorff to observe, that if he does not animadvert upon the arguments he has made use of upon this occasion, it is because he thinks he shall render a much more essential service to his Court, as well as to that of Copenhagen, by abstaining from all that might remove them from the object which both ought to have equally at heart. With respect to the mediation which the Count de Bernstorff proposes as the most proper means of doing away the difficulties of this discussion, the undersigned thinks he can reply with certainty, that, in spite of the apparent misunderstanding which may have existed between the two Courts, there is no sovereign in Europe to whom the King would refer himself, with respect to his dearest interests, with more confidence, than the Emperor of Russia; no one is more ready than the undersigned to do justice to the loyalty and zeal of that sovereign for the good cause. But he believes that, in a similar case, it would be useless to recur even to that intervention, however respectable it may be; and that the Court of Denmark, introducing into the discussion the same frankness as the Court of London, and the same desire of preventing speedily all objects of fatal misunderstanding, will find out the means of effecting this object without difficulty.

WHITWORTH

Declaration by which His Majesty the Emperor of Russia invited Sweden, Prussia and Denmark to conclude a Convention for the Reestablishment of the Rights of Neutrality, August 27, 1800²

Europe gave its approval to the measures that were taken by the majority of maritime Powers for the establishment, as a sacred pact, of the principles of a wise and impartial neutrality, when a naval war,

¹*Collection of State Papers*, vol. 10, p. 97.

²Translation. French text at *British and Foreign State Papers*, vol. 1, pt. 1, p. 334.

which had broken out in 1780 between two great Powers, laid upon the other nations the obligation of providing for the security of their subjects' commerce and navigation. Every act that is founded on justice should obtain general assent; and in this case all that was done was to put again into effect the principles of the law of nations. Russia had at that time the inestimable advantage of carrying the reestablishment of these principles to their ultimate goal, and she was, so to speak, the regulator of the different measures which should cause these principles to be respected. Each of the Powers acceded thereto, enjoyed innumerable advantages therefrom, and this arrangement served as a basis for all the treaties of commerce that Russia concluded thereafter. General approval had made of the principles on which it rested a kind of code of the nations; it was at the same time the code of humanity. The common interest of mankind guaranteed its maintenance and execution.

But perhaps there was too little effort to give these principles a new sanction at the time when, a great Power having reached the point of dissolution, nearly all the other nations felt the fatal influence thereof; when the majority of political bonds were broken or took another direction as a result of the war which was not long in breaking out—a war so different from those that had preceded it, and whose events, which were so multifarious and extraordinary, destroyed all former combinations. Attention being absorbed by events of such vital interest, it was impossible to give the necessary care to the maintenance of these salutary stipulations. On the one hand, justice should have led the belligerent Powers to present a method of guarantee; and the neutral Powers, which were confident that this would be done, believed that they had sufficiently ensured freedom of navigation and commerce to cause it to be respected at least by legitimate Governments, when a new incident proved to what extent independence of Crowns can be exposed to danger, unless the principles and maxims were reestablished, which alone can serve, during this war, as the basis for tranquillity and security of neutral Powers.

On July 13/25 last, an English frigate met at the entrance to the Channel a Danish frigate which was convoying to different ports several vessels of its nation. The Danish captain, after his declaration that he had no article of contraband on board, having resisted the visitation of his vessel, was attacked and forced to yield to superior strength. It, as well as its convoy, was taken to English ports.

The first care of His Danish Majesty, the friend and ally of His Majesty the Emperor of all the Russias, was to inform this latter sovereign of this event and to consult him as to how they should regard this self-evident violation of the law of nations and the principles of neutrality which formed the basis of the treaty of commerce between Denmark and Russia.

Although His Imperial Majesty up to the present moment can not but believe that such a violation will be highly disapproved of by His Britannic Majesty, and although His Majesty is pleased to believe that the equity of His Britannic Majesty will induce him not only to refuse to approve this act, but also to give the Court of Denmark satisfaction proportional to the insult, nevertheless His Imperial Majesty, in order to prevent the recurrence of such acts of violence in future, recognizes the necessity of reestablishing the bases of neutrality, under whose protection his subjects, as well as those of neutral Powers, may enjoy the fruits of their industry and all the advantages of neutral nations, without being exposed hereafter to arbitrary measures which none of the belligerent Powers can permit with impunity against them.

As it is clearly to the interest of His Imperial Majesty, both with respect to the navigation of his own subjects and that of the nations nearest to his ports, to protect from such acts of aggression or violence the seas which bathe the shores of Russia, he invites the Powers that have ports in these regions, and particularly Their Majesties the Kings of Prussia, Denmark, and Sweden, to accede, together with His Imperial Majesty, to the measures that he shall propose to them successively to reestablish in all their force the principles of armed neutrality, and thus to ensure the freedom of the seas. His Majesty announces at the same time to these sovereigns, by the present declaration, that he will use all the force that his dignity requires to uphold the honor of his flag and the flags of his allies, to guarantee their subjects from any violation of the rights sanctioned by all peoples, and to secure for them, under the protection of their respective Governments, all the advantages that result from freedom of commerce and navigation.

His Imperial Majesty, likewise animated by sentiments of justice and impartiality, declares that, while he shall establish a rule for the strict observance of the rights of neutrality, he will not impair the force of any one of them, and that the measures which he shall in his

wisdom adopt shall guide the conduct of his commanding officers and subjects, in accordance with the principles of the most rigorous equity, and in such a way that the belligerent Powers themselves will be constrained to recognize the necessity for his provisions and the beneficent purity of his views.

The Minister of His Imperial Majesty addresses, by order of his sovereign, the present declaration to his Excellency Baron de Stedingk, Ambassador Extraordinary of His Majesty the King of Sweden, requesting him to communicate it immediately to his Court.

COUNT DE ROSTOPSHIN
COUNT DE PANIN

His Excellency BARON DE STEDINGK.

Preliminary Convention between Denmark and Great Britain regarding the "Freya" Dispute, August 29, 1800¹

Their Danish and Britannic Majesties, equally animated by a desire to prevent by means of a preliminary friendly agreement the consequences that might result from the difference which has arisen between them as a result of the encounter which took place between the Danish frigate *Freya* and certain English warships, and to restore in full measure the relations of friendship and confidence which have so long united them, have to this end appointed and constituted as their plenipotentiaries: His Danish Majesty, Count Bernstorff, his Chamberlain and Secretary of State for Foreign Affairs; and His Britannic Majesty, Lord Whitworth, Knight of the Bath, who having communicated to each other their respective full powers have agreed upon the following articles:

ARTICLE 1

The question of right, with relation to the visiting of neutral vessels under convoy, shall be deferred to a subsequent discussion.

ARTICLE 2

The Danish frigate *Freya* and the vessels under its convoy shall be immediately released and the said frigate shall receive in the ports of

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 149.

His Britannic Majesty all that it may require for repairs, according to the practice in vogue between friendly and allied Powers.

ARTICLE 3

To prevent the renewal of disputes of the same nature as the result of similar encounters, His Danish Majesty shall suspend the sending of convoys until subsequent explanations on this same subject shall have resulted in a definitive convention.

ARTICLE 4

If, however, encounters of this sort should occur before the instructions intended to prevent them can be put into operation, they shall have no serious consequences, and the settlement thereof shall be considered as being included in the matters covered by the present convention.

ARTICLE 5

This convention shall be ratified within three weeks from the date on which it is signed, or sooner if possible.

In faith whereof, we the undersigned plenipotentiaries of Their Danish and Britannic Majesties, have signed in their names, and by virtue of our full powers, the present convention, and have hereto affixed the seal of our arms.

Done at Copenhagen, August 29, 1800.

[L. S.] (Signed) C. BERNSTORFF

[L. S.] (Signed) WHITWORTH

**Decree of the Emperor of Russia regarding Sequestration of the
Property of Englishmen, August 29, 1800¹**

Pursuant to the orders of his Excellency Chevalier Pepow, Major General commanding at Riga, under date of August 28, the magistrates of this city announce that His Imperial Majesty, having been

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 153.

informed of the acts of violence which the English have committed against Denmark, and having learned that an English squadron has passed the Sound, an event which, by causing this passage to be closed, has seriously affected the entire commerce of the Baltic, has ordered that, as security against the damage that may result therefrom to Russian commerce, the real designs of the English being as yet unknown, all property belonging to Englishmen be sequestered; that the most rigorous measures be taken to prevent this property from being restored to them under any pretext and without the permission of His Imperial Majesty, without, however, confiscating it or molesting the English in their domestic commerce.

Published at the city hall of Riga, August 29, 1800.

Ad mandatum.

(Signed) SCHWAZ
Secretary in Chief

**On the Subject of the Capture of Neutral Ships and of the Project
of Confederacy supposed to exist in the North against Great
Britain, September, 1800¹**

It must have occurred to the observation of every man, and not without pain to every well-thinking person, that several of our daily papers, namely, mostly those in the interests of opposition, have exerted themselves, with more than ordinary malignity, to represent the subject before us in the worst colors; and that they have in this instance, as in every other in which they could flatter the enemies of their country, and misrepresent the acts of government, been faithful to that systematic rule of conduct, which their repeated defeats, and

¹*Collection of State Papers*, vol. 11, p. 169. This article was published in the London papers so early as the 12th of September, 1800. It is attributed to the pen of a noble Lord, who has been for many years honored with the representation of His Majesty at the Court of one of the northern Powers engaged in the confederacy. It must be a matter of interest and curiosity to know what were the sentiments at that time of such an able statesman, possessing such an opportunity of information upon the subject; and therefore the editor has not hesitated to give the article, though not avowedly official, a place in this collection.

the disappointment of their sinister hopes, by the vigor of administration, have suggested to their malevolence. But it shall be the object of these lines to undeceive the honest and sober portion of the people, who, unaware of the falsehoods daily propagated in those papers, have suffered themselves to be misled by the contemptible comments which have lately swelled their columns, in relation to the present subject, while I endeavor to show that it is to the rancor and jealousy entertained by some of the northern Courts, that of Denmark in particular, of the commercial prosperity of Great Britain, and not, as the hirelings of opposition would fain have us believe, to the arrogant, unjustifiable pretensions, or haughty deportment, of our own people towards the rest of the world, that we are to look for the source of the prevailing misunderstandings.

The system now apparently manifesting itself in the north is not new: one similar in its tendency disclosed itself towards the latter end of last war; and our differences with Holland, which country advanced the same unjustifiable pretensions, to a free and uninterrupted intercourse with the enemies of Great Britain, which it would appear Denmark now conceives the design of establishing, were brought to a crisis by the discovery of proceedings decidedly hostile on the part of that republic, as may eventually prove to be the case with regard to Denmark, if the Government of that country avows or justifies the late hostile aggression, of which we have so much reason to complain. Indeed, during the whole of the present war, the conduct pursued by the subjects of that nation has been more than equivocal; the most marked partiality for our enemies has distinguished them in multitudes of instances; and it will not be improper for every Englishman to attend to the consequences which he may expect hereafter, if this semi-warfare, under the cloak of neutrality, is to be tolerated, in compliance with the murmurings of disaffection at home, the malicious insinuations of our external enemy, or the thirst of pelf of pretended friends.

It may first be asked, what is the nature of the present war? Each nation engaged in it will inform you, that it is a contest undertaken in defense of its just rights, dearest interests, and independence: and individuals must form their own judgment of its expediency and justice, from such facts and documents as have come to their knowledge respecting its origin and causes. An inquiry into the merits of a question so often and so ably discussed in Parliament, and latterly so

judiciously treated in the incomparable work of Mr. Herbert Marsh, who has immortalized his name, among fair and candid men, by this production, would be foreign to the present purpose: it is sufficient for us to know that war actually exists, that that war is waged, on our part singly, against the united maritime strength of the first naval Powers of Europe, and one of those Powers, in particular, the relentless rival of this country, and the most desperate and inveterate foe which, perhaps, a nation had ever to contend with; one which no sacrifice, short of the most abject concession, will satisfy, if she proves successful in the present conflict.

Does it not follow then of course, does not self-preservation inform us, that our whole object, all our most strenuous endeavors, should be to weaken and deprive that cruel enemy of the power of molesting us, and to employ with effect the means of defense which it has pleased God, in the largeness of his bounty to this nation, to place in our hands?

The ultimate object of a just and necessary war, such as ours is, is security at home, respect abroad; in a word, a safe and honorable peace: to attain it, we must exert our valor, skill, and vigilance, in that line of warfare where they are most conspicuous, and to which it seems nature has peculiarly adapted us, in conformity to the happy allotment made to us by Providence of an insular situation. To our exertions by sea, to our naval strength alone, therefore, are we to look for protection, and the preservation of our liberties and political existence as an independent nation. To our fleets, under the blessing of Providence, are we indebted for the advantages we enjoy; and it surely is no less a duty carefully to watch that our enemies receive no undue aid and assistance from nations denominating themselves friendly, than it is to defend ourselves from those enemies; or otherwise, while with our right arm we are repelling the open united assaults of France, Spain, and Holland, and spending blood and treasure in our cause, we shall have to protect ourselves with our left from the stiletto attacks and secret blows from beneath the neutral cloak of Denmark and Sweden. Indeed there would be a glaring absurdity, and an unpardonable supineness on the part of those who are intrusted with the management of our dearest concerns, if they were tamely to suffer such proceedings; and if the illicit practices of neutrals have been sometimes connived at, as being the isolated acts of certain individuals, unauthorized and unsupported by their superiors, it does not follow

that those practices are uniformly to be tolerated, or to pass unnoticed, especially when they assume the aspect of a hostile disregard of common usage and the law of nations, and appear to be countenanced by those very authorities whose duty it is to check and suppress them.

It may be necessary, for the information of some readers, to state what the practices alluded to may be, and I am happy to be able to do so, not only from personal observation, but upon high and respectable judicial authority. I shall take Denmark as the standard of the most unwarrantable proceedings ever ascribed to a nation in amity with His Majesty, and endeavor to show that the subjects of that crown have, more than any other people known, indulged in unlawful speculation and the eager thirst of gold, at the expense of other States, to the great annoyance especially of Great Britain, and the unspeakable advantages of her numerous enemies.

It may be necessary here to show in what manner the Danes have succeeded in covering the property of the enemy to the extent they have done, as assertions, unsubstantiated by facts, may be met by assertions equally plausible, or equally unsatisfactory to the reader.

It will not be denied that the enemies of England in general, and especially the Dutch, whose ships and property have been blocked up in the harbors of Surinam, and elsewhere in the West Indies and America, by the British cruisers, have called out to other maritime nations to come and assist them to carry home their colonial produce; nor will it be denied, that, as almost all the inland trade of Holland is carried on by commission, so their external navigation is carried on by seamen who are the natives of the northern parts of Europe, whilst their own people are employed in the canals and trackschuyts. The masters of most Dutch ships are Danes, and nothing certainly could be more obvious than the policy of covering Dutch property by fraudulent intervention and false transfers to Danish subjects; and, from the extent and continuance of these practices, it would indeed almost appear, that the payment of duties into the Danish treasury was as irresistible for the Danish Government, as it was found impossible for the Danish merchant to withstand the monopolizing of the trade and navigation of Holland. Thus things have gone to great length; pretended sales, *pro forma*, have been made by Dutch proprietors to Danes, and other neutral subjects, in the ports of Surinam and the Dutch colonies abroad, and at Amsterdam and other ports of Europe.

At these sales the proper parties were not always present themselves,

the equivalent consideration was not paid down, and the transaction was neither before proper magistrates on oath, nor had the true forms of notarial jurisdiction. Crews were actually sent from Copenhagen, Altona, and elsewhere, to Surinam, etc. The Dutch governor himself is absolutely said to have hoisted the Danish flag; and *entremetteurs*, or middlemen, agents, and brokers, charged, in their correspondence and papers, so much for commission for what they called *neutralization*. Royal sea passes were obtained at Copenhagen as for ships belonging to Denmark, and for persons as Danish inhabitants, which ships had never been in the ports of Denmark, and which persons had passed the greatest part of their lives in foreign countries, under foreign protection. The very bills of admeasurement were made only with the curious clause of *ad interim*, viz., to be valid only until such time as they should come to Denmark. It must be further observed, that the purchases made in the colonies of the enemy, particularly by the Danes, were attended by a mode of proceeding as equivocal, as it tended strongly to conceal his property. Persons, in the character of Danes, were sent from Europe to buy up West India produce: for these cargoes bills were drawn for the payment, upon condition of the ship and cargo's safe arrival, and that the person on whom the bills were drawn should have the commission: thus, in case the ship was captured, and never arrived, there was no actual payment fairly out and out, and no loss to the Dane. There was another practice, that of drawing and redrawing; as when the Dane has been drawn upon, and paid the pretended price for the goods, he draws again upon the Dutch merchant, in whom all property begins and ends. How then were such difficulties to be got over in our courts? How was it possible to discover the ultimate? For if the parties had no conscience in falsifying oaths, proofs, and papers, little could be done towards discovering the truth, and checking an intercourse so opposite to every thing that is to be hoped for by this country in a naval war. Besides, even on the supposition of neutrals having a right to buy and sell in the enemies colonies, and of its being only required of them to prove that there was a *bona fide* purchase in open market, out and out, for a fair equivalent actually paid, still so much fraud, of the kind above related, appeared openly in the Court of Admiralty, that the decisions could not be different from what they were: for, notwithstanding the clamors raised by the Danes, every neutral subject must be conscious that, as such a trade must be attended with peculiar suspicions, it was

incumbent on each of them to produce more exact documents; and as their profits were immense on the general scale, so individuals ought the more patiently to have abided the consequences of seizure and investigation. It is scarcely necessary to add, that these doubts and suspicions were increased, in proportion to the facility with which it was known that briefs of burghership, constituting the holder a Danish citizen, and giving him all the privileges and advantages of a Danish subject in matters of trade, were sold in every town in Denmark to the first comer, whether a Cherokee or a Mandingo Negro; and that Englishmen as well as Dutchmen were frequently, under a similar metamorphose, enabled to hold a direct intercourse with all the enemies ports abroad, to display the Danish flag, and exhibit Danish papers; though, in the case of the former, this intercourse was not only unlawful, but even criminal, upon the ground of express law to that effect, in time of war, and upon the principle of no Englishman, or other British subject, having a right, at any time, to claim the protection of a foreign Power in any transaction, whether commercial or other, that is injurious to the interests of his lawful sovereign. Consular certificates, declarations, and interventions, by which the neutral subject sought to protect his vessel from the search of such consular agent's own countrymen at sea, and to legalize his cargo by the seeming acknowledgment of its lawful character by the enemies of Great Britain, was another instrument of deception in the hands of the neutralist, and a new system introduced by the politics of France, contrary to the ancient established laws of nations, which no judge in admiralty causes could ever submit to. But in adducing the multiplied instances of the practices pursued in regard to the West India settlements of our enemies, it is not to be understood that the speculations of the Danes were confined to that quarter of the world only; the east as well as the west, the Mediterranean as well as the ocean, all equally afforded the fairest opportunities for similar abuses; and the great settlement of Batavia, in particular, has been preserved to Holland by the fraudulent intervention of Danish subjects alone, while the whole trade of the Mauritius passed through their hands, under the same fictitious form with that of the Dutch and French West India islands, although the whole capital of Denmark would scarcely have sufficed to bring one of those branches of commerce fairly, out and out, into their own hands. In Europe, the ports of Carthagena, Cadiz, Ferrol, the ports of Toulon, L'Orient, Brest, and Rochefort, received their naval stores from the

hands of neutrals, and the Danish flag is everywhere conspicuous, where the enemies of England stand in need of supplies of this or any other description, whether lawful or unlawful. But it will happen with this flag, at the close of the present war, in increased proportion as it did with the same flag at the end of the last, when, to quote a single example only, out of eighty vessels which sailed the seas in the name of one great mercantile house of Copenhagen, under Danish colors, there was not one but what assumed its native Dutch character at the pacification, and acknowledged its real proprietor by returning to the ports of Holland. The metamorphose of the French, Dutch, and Spaniards, into Danes, will be still more striking at the close of the present war: at the signing of a peace, the scanty flag of Denmark will resume its proper place, and convey a juster idea of its original insignificance than may be now entertained of it by such as are ignorant of these things. But enough has been said to prove the necessity of the strictest watchfulness on our part; and where is the man who conscientiously can justify such proceedings? Where is the Englishman, who has the interest of his country at heart, that would submit his fair and impartial judgment of these matters, and his right of self-preservation, to false notions of justice, to those who would so cruelly impose on his good faith, and who have so bare-facedly trespassed on his borders, and trampled his best fences under foot, while they professed their friendship for him, and declared themselves neuter in the quarrel between him and his enemies? But, above all, where is the Englishman who, though with native humanity and characteristic benevolence he might be disposed to spare the individual who injured him, would tamely submit to the same encroachments, if he discovered a really hostile design in a nation at large, and the intention, openly manifested, of opposing, by acts of violence and force, the lawful exercise of his just prerogative? The late circumstance of a Danish ship of war resisting by arms the usual visit to which neutral merchantmen are liable on the part of every belligerent Power, is one which no existing treaty, no law of nations, no usage ancient or modern, can justify or countenance; it was a direct infraction of the neutrality of Denmark, by one of her own commanders; a most unwarrantable opposition to the lawful exercise of the duty imposed on the British officers, and a wanton violation of a right inherent in every belligerent Power, and naturally arising from a state of war; a right which our great active rival even did not dispute, in a case which

occurred in the East Indies in the course of Lord Cornwallis's memorable war with the late Tippoo Sultaun; a right, in short, in many instances sanctioned and acknowledged by treaty, with provision only against arbitrary and vexatious detention, where papers and other documents appeared unobjectionable. But in regard to warlike stores, more specific arrangements still have been reciprocally agreed on between the States; and, in many cases, which a reference to our public treaties would discover to the reader's satisfaction, each individual article constituting such stores is named and declared contraband by mutual consent, and proper forms of sea passes for their respective subjects formally stipulated. With what conscience, then, can it be pretended, that the escort of a ship of war, of a nation not a party in the contest, should screen the neutral merchantman from the inspection of his papers, or the stricter search of a belligerent Power, whose only hope of a successful issue is on the assurance of the enemy's receiving no undue succor or advantage from nations professing neutrality and friendship? If protection of this kind is lawful in one instance, it must be equally so in a thousand, and the right of visiting must cease. The admission of so preposterous a pretension would shortly put an end to everything; and we had much better accede at once to the principle which French policy would fain prescribe, but which British sagacity contemptuously rejects, of suffering neutral bottoms to constitute neutral property, and thus deliver up commerce and navy, at a stroke, to the mercy of our foes.

There are men, who, unacquainted with Denmark's means of attack and defense, may form such erroneous conjectures on that subject, as the malice of the disaffected would suggest to them; and there are others, who, better acquainted with the relative powers of that country, may stand appalled at the bugbear of the northern confederacy, and their frightened fancy exhibit to their view the fleets of Denmark, Sweden, and Russia, combining their operations at sea with those of a Prussian army by land, and changing the face of the globe. But let us take a more impartial view of things, and we shall soon perceive that such fears are imaginary only, and that people shrink more from the sound, than they would do from the reality of this war, if, indeed, such a war should be in contemplation with those States, which is extremely problematical. It must, in truth, be acknowledged, that there is something very extraordinary in the conduct of the Court more immediately in question; and the circumstance of two ships, belonging

to that State, acting in a manner so exactly corresponding, though in different seas, would seem to corroborate the idea of the existence of a secret understanding between her and other maritime Powers of the north, as it is hardly to be supposed, that, without some such concert, she would have adopted so desperate a measure as to hazard singly a contest with this country; but still this is doubtful, and it may be only an experiment made on the temper of the British Cabinet, which the resolute firmness of this Cabinet will induce that Court to abandon with as much haste, perhaps, as it undertook it. But in order to be prepared for every contingency, let us suppose the existence of this confederacy, and let us review the forces of our new antagonists in hostile array, while we examine the consequences to them and to ourselves, of so unjust a league, so incoherent, so preposterous, so unnatural a state of things.

We see Denmark with thirty-three sail of the line in the harbor of Copenhagen, her only naval arsenal, with two or three others on the stocks, and from twelve to fifteen frigates and other smaller vessels; two, at most, of these ships, carrying upwards of seventy-four guns—some that number, but the greater part only sixty-four. Of the number of ships of the line, eight at least are wholly unfit for service, and if five-and-twenty could be equipped, it is the utmost; but it could never happen that they could all be properly manned at the same time; and if it were possible, it is extremely improbable that the whole fleet would be risked, at once, to the hazard of an action, even with an enemy of inferior force. Ten or twelve ships, therefore, is the utmost number that would ever quit the Baltic; the rest would be reserved to replace, occasionally, such of them as wanted refitting, after service or accidents at sea, and as guard-ships for the protection of their coasts, and the harbors of Norway in particular, where there exists a spirit not altogether friendly to the Government of Denmark, and a brave people, the enthusiastic admirers of the naval valor and prowess of Britain, as well as of her invaluable constitution. The Danish squadron, once at sea, would naturally seek the ports of Holland; it might also hope to evade the vigilance of our fleet, and escape into those ports; but another Duncan would soon appear to paralyze its future operations. The manning of this squadron, however, must first be effected, before it undertakes any sort of operations; and unless the Danish Government has been silently pursuing measures, in order to secure so requisite a preliminary to war, this object would extremely

perplex that Government in the outset. The Danish, as well as Norwegian sailors, fishermen, and other seafaring people, along the coasts of those kingdoms, are all enrolled, and obliged, by law, to serve on board His Danish Majesty's fleet, whenever a proper notice is delivered to them to repair to their allotted stations; and, indeed, by this mode, a respectable squadron, fifteen sail of the line perhaps, might be soon manned, provided the event had been foreseen, and those men could be found unemployed at their respective homes; but this can hardly be supposed to be the case at present:—those men's livelihoods being procured by their industry and various maritime vocations, it rarely happens that a third of their number is to be met with on the spur of the occasion; besides, it is well known, that, as in that country, of late years, every wise and prudent consideration has yielded to the desire of accumulating wealth—the boon held out to the Danish mariners of becoming the carriers of the world, afforded too promising a prospect of general profit, to admit of those permits being withheld from them by the Government, which, by law, it is authorized to grant to such as are desirous of serving abroad, or of absenting themselves on distant voyages. Thus, on an emergency, at this season of the year, it would prove extremely difficult to man five ships of the line, and an equal number of frigates; and if the summer months are lost, the campaign becomes hopeless for a nation, with which the elements, and the ice in particular, are at variance for the remaining portion of the year.

From this view of the naval power of Denmark, it will not be contended, that much is to be apprehended by this country from that quarter; nor will it be thought, upon an inquiry into that of Sweden, that the accession of that country should much alarm us. The diminished fleet of Sweden, reduced, since the last war with Russia, to twenty sail of the line, would unwillingly risk its reputation beyond the Sound; and though a division of four or five ships might join the Danes in the North Sea, the remainder would be satisfied with a summer cruise in the Baltic or Cattegat, and be wanted to protect Gottenburgh, as well as Copenhagen, and the other trading towns. The manning of the Swedish fleet would be attended with still greater difficulties than even that of Denmark; and the expenses of a war, and the present shattered state of the finances of that country, would be more severely felt, and more reluctantly submitted to, than in the former, where public credit is on a better footing, and the treasury

more judiciously administered; yet even there the most serious consequences might be apprehended from any great additional taxes or burdens on a people naturally selfish, and not enjoying the inestimable privilege of assessing themselves.

With respect to Russia, her navy is more respectable than the two former put together; sixty sail of the line, with a proportionable number of smaller ships, are said to compose her marine: but in the present state of uncertainty, which prevails in regard to the real designs of that Court, it would be misplaced to name His Imperial Majesty, the Emperor Paul, otherwise than with profound deference, and just admiration of the noble deeds achieved by his arms, during the time he favored the common cause; and little more shall, accordingly, be said here, on the part that monarch may be supposed to take, in the so much rumored concert of the north, than merely, that a naval war might possibly not be attended with the same brilliant successes which signalized His Imperial Majesty's arms by land, as his ships are neither calculated for very severe service in distant seas, nor his mariners very numerous, or likely to be much disposed to enter with ardor into a war with that ally, of whose irresistible valor and dexterity on his native element, they have had so many opportunities of receiving the most evincing proofs; such proofs, as might make even the brave and hardy Russian pause, ere he entered the lists of his opponents.

Of Prussia, as merely a military Power, little need be said, although that country, notwithstanding, possesses the means of materially injuring our trade, by the power and influence she enjoys over Hamburgh, and other ports in Germany, from which she might entirely exclude us, if she could find any compensation in that measure, for the more essential injury the commerce of Germany in general, and of her own fine province in Silesia, so noted for its linen manufactories, in particular, would experience from being cut off from all exportation by sea.

This hasty sketch of the power and maritime strength of the projected alliance against this country (if, indeed, it be true that the dictates of malevolence, and the basest passions, should have overcome the suggestions of sound policy, which must ever militate against the formation of such an alliance), will suffice to convince us, that the whole northern marine, united with that of the rest of Europe, is insufficient to cope, successfully, with the triumphant fleets of Great Britain; and it may now be well to state what the consequences of such combination might be, as well to our new enemies as ourselves.

The trade of the Baltic, and even to Germany, would be, at once, cut off from this country, and the momentary inconvenience would be severely felt, though it could not be productive of any very serious mischiefs, as such a state of things could not be durable. We should receive no naval supplies from the Baltic; and all stores of that kind would rise to an enormous price in every part of His Majesty's dominions. Government having a title to preemption, would of course provide against the wants of the navy; but commercial navigation would experience considerable distress. On the other hand, the enormous sums of money which are annually remitted to the States of the Baltic, for those articles, would remain at home, or be fully employed in setting hands to work in every other corner of the globe, from whence the same commodities could possibly be procured. We should, indeed, have to send further for them, but we should in the end obtain them; and the Baltic States, perceiving the fatal consequences to themselves of such a diversion of their branches of trade, would not be tempted to pursue the same blind and rugged path of policy to its conclusion—their own eventual ruin.

If those supplies were cut off from us, we should take care that they were equally so from the rest of Europe; and the general stagnation which would follow, would become insupportable to the northern Powers, as the article of naval stores is the only valuable return they have to make for their own supply of many of the necessities and all the luxuries of life from other countries. It is, besides, particularly with this country, that theirs is a gaining trade; with most other nations it is a losing one. They take little from us, in comparison with what we receive from them; and the large returns we are obliged to make them in specie are the life and soul of all their other commerce. Besides, what is it that British industry might not accomplish? Should we tamely sit down under our privations, and thus acknowledge our dependence on those nations for the essential requisites towards maintaining that marine which is the pride and glory, as well as the support of Great Britain; the envy and admiration, as well as the dread of every hostile Power? Certainly not. Why should not the noble fir-woods of Scotland, though inland and of difficult access, be rendered serviceable by British perseverance, and yield masts to ships of English oak, as well as turpentine? And how would Norway brook the loss of those chief sources of her commerce? What would be said in Sweden, if British iron was found sufficient, and if, with

patriotic spirit, all ornamental work in this article was to cease in England, in order to supply our dock-yards and naval arsenals with the requisite quantity? What would be said there, if tar, pitch, etc., were to be imported in greater quantities from America? And would not the dealers in hemp, flax, and coarse linens, in the Prussian and Russian provinces, look confounded, on perceiving that the exigency of the case had driven the bold and enterprising genius of British traders to the search of the same commodities, not only from the well-known sources of industry, in this species of merchandise, in Scotland and Ireland, but from Barbary, America, and Levant, and elsewhere? Can the occasional supplies of wheat, and other grain, we receive from Denmark, tempt us to forego the precious right she has rashly ventured to dispute with us; and would not legislative provision for the extension and improvement of agriculture at home soon render us independent of her for this necessary of life? As for the trifling articles, which her jealousy of our superior workmanship and excellent materials in manufacture allows her to take of us, and of which more is smuggled than lawfully imported by her own people, they are too trifling to deserve mentioning among our losses in trade by war.

With regard to Hamburg, indeed, and the use of the rivers Elbe and Weser, the kings of Prussia and Denmark might, as was before hinted, materially injure us, by depriving us of these only remaining channels of commercial intercourse with Germany and the northern continent of Europe: but all communication with the ocean would likewise be shut to them; and it is not to be believed that the Elector of Saxony, or other pacific States, would silently acquiesce in so violent a measure, and the consequent suspension of all exportation of their superfluities by sea.

The first immediate consequence of our naval operations would be, the total suspension of the Sound duties, into the Danish treasury; and it need only be said that £160,000 sterling are annually received under that head, to show that it is a most important item of revenue to the State, and one which Denmark would as reluctantly part with, as it could little spare, from the civil list, or immediate expenditure of the royal household, to which it is principally appropriated. Scarcely a ship would venture through those straits; and the British cruisers may, in case of war with Denmark, more effectually deprive the Dutch and French of their supplies from the Baltic than they do even at this

moment. We should deprive the Dutch of the inestimable advantage they derive from the use of the canal of Kiel, in Holstein, through which their small craft and coasting vessels, passing from the Baltic into the river Eyder, and so on into the German Ocean, now supply their wants, as well as those of France, without danger of interruption from our ships of war, which, drawing more water, are unable to pursue them through the shoals and narrows to which those people immediately betake themselves; but once at liberty to act hostilely against Denmark, nothing could hinder Great Britain from possessing herself of the island of Heligoland at the entrance of the Elbe, and from thence annoying with light vessels the Dutch coasting trade, as it issued from the Eyder, at the same time that they blocked up the narrow passes at the mouths of the Elbe and Weser, leading to North Holland. Copenhagen and Altona, from their position and military strength; the seaports of Holstein and of Norway, from their little importance to us, might remain unmolested; but Tranquebar, Fredericksnagore, in the East, Saint Croix and Saint Thomas, in the West Indies, would fall an easy prey, and with them all the hopes of Denmark of commercial grandeur and prosperity, to the utter confusion and trepidation of the whole nation, which attaches the utmost consequence to the possession of those settlements.

**Letter of the Spanish Secretary of State to the Swedish Minister
regarding British Violations of the Swedish Flag, September
17, 1800¹**

SIR: The King my master has learned with the greatest indignation, from a report which the Consul of His Swedish Majesty at Barcelona has sent to the Captain General of Catalonia, containing the declaration of Captain Rudhardt, of the Swedish galiot *Hoffnung*, that on the afternoon of September 4, last, two English vessels and a frigate forced the said captain, after having examined his papers and found them to be all right, to take on board English officers and a considerable number of sailors and to permit his vessel at nightfall to be towed

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 157.

by several English boats to the roadstead of Barcelona and under the guns of its batteries.

That the English, having reduced the said captain and his crew to silence, by pointing a pistol at his breast, took possession of the helm, and at nine o'clock that night, by means of the said vessel and the boats surrounding it, made an attack on two frigates under the Spanish flag, which were at anchor. The latter, having no reason to suspect that this friendly and neutral vessel concealed enemies on board and thus served for an attack of the most treacherous nature, were in a manner surprised and forced to surrender.

For further details and the acts of violence committed by the English on the Swedish vessel, we would refer you to the captain's declaration, which is transmitted herewith.

The King my master can not but consider this incident as affecting the rights and injuring the interests of all the Powers of Europe, including those of England, and above all as a very serious insult to the flag of His Swedish Majesty.

Indeed, it is evident that, in admitting neutral vessels to their roadsteads and ports, the belligerent Powers desire to mitigate the scourge of war and to facilitate the commercial relations between peoples, which their mutual needs demand.

Therefore, whatever tends to render such navigation suspect and dangerous prejudices the rights and interests of all nations alike.

In the present case, the rights and honor of the Swedish flag have been violated in so outrageous a manner that few such examples can be found in the maritime history of Europe.

If the attack were left unpunished, it would tend to embroil two friendly nations, to paralyze their commercial relations, and to cause the nation that tolerated the insult to be considered as a secret auxiliary of the enemy Power, thus forcing Spain to adopt such measures as the interest of its vessels and the safety of its ports might require.

However, the King my master can not but feel that the Swedish captain was not guilty of the slightest connivance with the English, and that all that he did was to yield to their acts of violence and overpowering numbers.

Under this supposition, the King has commanded me to bring to the knowledge of His Swedish Majesty this grave insult to his flag; and having no doubt as to the latter's resentment at so base and lawless a proceeding on the part of certain officers of the British navy, he ex-

pects the Court of Stockholm to request the English Ministry most urgently to see to it that the officers guilty of the act in question are punished with the utmost severity, and that the two Spanish frigates which were surprised and removed from the roadstead of Barcelona by a ruse contrary to the law of nations and to the rules of war, are immediately restored, together with their cargoes, as having been illegally taken by means of a neutral vessel, which served as an instrument for the assailants.

His Catholic Majesty is the more confident in his belief that the success of this demand is assured, since the English Government itself can not be blind to the fact that its enemies, by following such an example, might likewise make use of neutral ships to infest its roadsteads and to perpetrate in its ports all the damage possible.

But if, contrary to his expectation, the steps taken by His Swedish Majesty at the Court of London to obtain reparation for the insult to its flag, as well as the restitution of the two Spanish frigates, should not meet with the success desired before the end of the year, His Majesty would consider himself obliged, although with the greatest regret, to adopt measures with respect to the Swedish flag which would protect its roadsteads and ports from so dangerous and revolting an outrage as that just committed by the English.

I have the honor to be, etc.

(Signed) CHEVALIER D'URQUIJO

ST. ILDEPHONSO, *September 17, 1800.*

**Circular Letter of the Spanish Minister to the Foreign Ambassadors
and Ministers at the Court of Madrid, September 17, 1800¹**

SIR: I have the honor to hand you a copy of the memorandum which the King my master has ordered me to send to his Minister at Stockholm, to be delivered to His Swedish Majesty's Minister.

The principles therein laid down and the event that has given rise to them are of such a nature as must interest all the commercial nations of Europe, particularly neutral Powers.

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 156.

His Majesty is convinced in advance that your Government will regard the matter in the same light and is pleased to believe that it will cooperate in endeavoring to erase, so far as possible, from the annals of this war an act so destructive of the confidence and hospitality enjoyed by neutral and friendly flags.

I take advantage of this occasion to renew the assurances of my consideration and esteem, and am, sir, yours, etc.

(Signed) CHEVALIER D'URQUIJO

ST. ILDEPHONSO, *September 17, 1800.*

Refusal of the Emperor of Russia to receive an Ambassador from the Emperor of Germany, October 15, 1800¹

According to advices received from the Privy Counselor, M. de Kalistchew, it has been made known that the Emperor of Germany intended to send an Extraordinary Embassy to the Court of His Imperial Majesty, to offer excuses for what happened at Ancona; and for this purpose he had named the Prince of Auersperg, a Lieutenant General of the Armies, and Knight of the Golden Fleece, as his Ambassador. It has not, however, pleased His Imperial Majesty either to accept the Embassy or the Ambassador, particularly in the person of the Prince of Auersperg, who during the journey of Her Imperial Highness the Grand Duchess Alexandra Pavlovna, allowed himself to offer her several indignities (*grossièretés*). His Majesty orders that no answer shall be returned to this notification.

Reply of the Swedish Minister to the Spanish Secretary of State, October 22, 1800²

His Swedish Majesty has learned with the greatest displeasure of the act of violence which certain officers of the English navy com-

¹*Annual Register*, 1800, p. 258. Extract from the *Petersburg Gazette* of October 15, 1800.

²Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 159.

mitted on a merchant ship of Swedish Pomerania, for the purpose of using it in a hostile undertaking against two frigates in the roadstead of Barcelona. Being in complete accord with His Catholic Majesty in his views upon this new abuse of force and the common danger which such examples may lead to, with respect not only to neutrals but to the belligerents themselves, His Majesty, both because of his friendly relations with the Court of Spain and the neutrality of his flag, will see that the grievance is brought before the Court of London.

In these demands, which involve principally the rights of the flag and subjects of Sweden, His Catholic Majesty will no doubt consider it just for the King to regard himself as the principal party. In pursuing his own interests, as His Majesty understands them, he will certainly not overlook the interests of Spain. Justice requires the restitution of what has been wrongfully taken: His Majesty shall insist upon that, though he can not guarantee the success of his efforts. He will, in due time, communicate confidentially to the Court of Spain the stand that the English Government may take in the matter; but a just confidence on the part of His Catholic Majesty will undoubtedly leave to the judgment of His Swedish Majesty the form and method to be followed in this business, without requiring that it be accomplished at any fixed time or that a report thereof be rendered. Spain, which, like the rest of Europe, is aware of the lengthy negotiations which Sweden has been carrying on at London with regard to the restitution of its vessels, can have no reason to expect speedier justice in a cause where the restitution is to be made to an enemy.

In general His Swedish Majesty does not admit any responsibility on his part for an act, the cause of which does not concern him. After the reports on the affair which the Court of Spain has had made and in view of the circumstances which that Court itself admits as having been determined, that it should attempt to implicate the Government of Sweden and this entire nation was certainly not to be expected.

It would be unfortunate if the wrongdoing of a third party should cause a rupture of the good relations which a number of direct discussions during the present war have been unable to alter. There have been frequent unfortunate occurrences, especially, it would appear, in Spanish ports: a Swedish ship taken in the very port itself—an intervening one—by the English; another vessel pillaged and completely destroyed by the French at Alicante; several others seized by French privateers stationed at the entrance to the port of Malaga, have given

His Swedish Majesty many occasions to suggest and demand in a friendly way, with a view to the security of his commerce, that the Court of Spain see that its territory is respected. His Majesty would have congratulated himself on the outcome of his representations, if he had observed in his favor any indication of the energy which the Government of Spain has recently displayed against him in a matter, in which he himself has nothing but grievances. Nevertheless the apparent uselessness of his demands has not caused His Majesty to depart from the tone of moderation and equity, which becomes the intercourse of two friendly Courts and to which His Majesty still hopes to see the Court of Spain return, after the various unfortunate occurrences in its ports.

The undersigned, Chancellor of the Court, who has the honor to transmit these views to Chevalier Huerta, Envoy Extraordinary of His Catholic Majesty, in reply to his communication of September 17, takes advantage of this occasion, etc.

(Signed) F. VON EHRENHEIM

DROTTNINGHOLM, *October 22, 1800.*

Letter of the Chancellor of Sweden to the Minister of Prussia concerning the British Violations of the Swedish Flag, November, 1800¹

Having informed the King of the interest taken by His Prussian Majesty in the demand of the Court of Spain concerning the abuse of the Swedish flag by the English, the undersigned, Chancellor of the Court, has been charged to express to Mr. de Tarrach the gratitude of His Majesty for the constant solicitude of the Court of Berlin with respect to the interests of neutral flags and His Majesty's entire confidence in that Court's point of view. The King was very much surprised at the way in which the Court of Spain publicly called Sweden to account on this occasion and at the threats which accompanied its communication. After all the vexations to which neutral flags have been exposed during the present war, this is the most oppressive

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 162.

measure which they have had to endure. In this way, placed constantly between offense and reparation, they must soon allow themselves to be drawn into the war or disappear from all the seas where war is being waged.

These truths being of such moment both for Sweden and for the other neutral Powers, His Swedish Majesty could not assume, in general, any responsibility for the abusive use by belligerent Powers of the Swedish of which they may take possession. This principle seems to His Majesty to be so well founded that he flatters himself with the belief that the Court of Berlin will give him all the support which justice and common interests would seem to require. It has been generally recognized up to the present time, amidst the many acts of violence which have been committed on both sides; otherwise the war would have been general. If the Ottoman Porte, Russia, and England had placed such responsibility upon all the flags that they found at Alexandria; if they had demanded Egypt back again from the respective Governments, because merchant ships had been compelled to transport French troops to take it by surprise; if they had put forward demands and conditions in this peremptory form, all commerce and all neutrality would have been destroyed. Therefore His Majesty considered that the act of violence against the Swedish flag at Barcelona could not be treated otherwise than the acts of which he has had occasion to complain previously; and he has reserved the right to take up the wrongs done his subjects or his flag at such time and in such a way as his special situation may permit.

His Majesty must not, however, conceal the fact that in the present case the injury that has been done to a friendly Power causes him the more regret because he considers the English capture as absolutely illegal and greatly desires to succeed, through his representations, in obtaining restitution. His Majesty will certainly leave no stone unturned in his endeavor to bring about an arrangement, on which rests, quite unexpectedly, the continuance of friendly relations between Sweden and Spain; but he can not do at present for the two frigates what he has not hitherto done for his own convoys, nor hold up brighter hopes to Spain than to himself.

The undersigned takes advantage of this opportunity to, etc.

(Signed) VON EHRENHEIM

**Extract from the Gazette of the Court of St. Petersburg regarding
an Embargo on British Vessels in Ports of the Island of Malta,
November 7, 1800¹**

We have been informed that the Island of Malta, which up to the present time has been in the hands of the French, has surrendered to English troops. It is not yet known, however, whether the regulation on this subject, dated December 30, 1798, has been complied with; namely, that upon the capture of this island it should be restored to the Order of St. John of Jerusalem, of which the Emperor of all the Russias is Grand Master. Consequently, it has pleased His Imperial Majesty, for the purpose of maintaining his rights, to order that in all the ports of his empire an embargo shall be placed on the English vessels therein, until this convention shall have been fulfilled.

**First Note of Lord Carysfort to Count Haugwitz regarding the
Occupation of Cuxhaven by Prussian Troops²**

BERLIN, *November 16, 1800.*

The instant Lord Carysfort, Envoy Extraordinary and Minister Plenipotentiary of His Britannic Majesty, learned that His Prussian Majesty was preparing to order a detachment of his troops to enter Cuxhaven, and that the reason which the public thought proper to assign for that measure, was the refusal given by the Government of Hamburg, to cause a vessel to be released, which, taken by one of the ships of war of His Britannic Majesty, had been compelled, in order to avoid the dangers of the sea, to enter that port, he thought it his duty to demand an audience of his Excellency Count Haugwitz, Minister of State and of the Cabinet, for the purpose of obtaining information with respect to that affair.

He received from his Excellency the assurance that the intentions of His Prussian Majesty were in no view hostile or contrary to the interests of Great Britain; but that the occupation of Cuxhaven had for its principal object the maintenance of the authority of His Prussian Majesty, in his character of chief and protector of the neutrality

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 155.

²*Collection of State Papers*, vol. 10, p. 198.

of the north of Germany, and that it was conducted with the consent of the city of Hamburg itself.

Lord Carysfort not being exactly acquainted with the circumstances under which the vessel in question found itself, deferred to another occasion, the observations which he might have wished to submit to his Excellency. He has now grounds to believe, that, laden with contraband goods, it was captured by one of His Britannic Majesty's ships as it was entering into the Texel; that is to say, into a port belonging to the enemies of His Majesty; and that it was restored as soon as the officer who had the charge of it could be informed of the orders of his superiors.

With respect to the occupation of the town of Cuxhaven by the Prussian troops, which must have been founded on particular conventions between His Prussian Majesty and the Senate of Hamburg, he does not think himself called upon to take part in that discussion; but he feels himself authorized to claim, in favor of the subjects and vessels of the King his master, all the rights to which they have a just pretension in a neutral port belonging to a republic, whose connections with the States of His Majesty are very ancient, and generally known; no convention made between the city of Hamburg and His Prussian Majesty being capable of invalidating or altering his rights.

In consequence of these considerations he dares hope that His Prussian Majesty may still suspend the occupation of Cuxhaven, until the two Courts shall have the means of entering into mutual explanations, more particularly since such occupation, in the actual circumstances, might give room to ill-disposed minds to attribute to His Prussian Majesty views not less opposite to the sentiments of justice and moderation which govern all his measures, than to the friendship and the good harmony which subsist between him and His Britannic Majesty.

At all events, it will not escape the wisdom and humanity of His Majesty, that the entrance of a numerous corps of troops into a village both poor and with a small extent of territory, would probably augment the misery of the inhabitants; and that the city of Hamburg having always possessed that place, so indispensably necessary to the preservation of the navigation of the Elbe, all which may trouble that possession, derange ancient customs, and influence the pilots there at present to seek a refuge elsewhere, would strike a sensible blow at the commerce of all the countries of the north of Germany, and even at that of the States of His Prussian Majesty.

(Signed) CARYSFORT

Second Note of Lord Carysfort to Count Haugwitz regarding the Occupation of Cuxhaven by Prussian Troops¹

BERLIN, *November 18, 1800.*

The undersigned, Extraordinary Envoy and Minister Plenipotentiary of His Britannic Majesty, thinks himself obliged again to address himself to his Excellency Count Haugwitz, relative to the intention of His Prussian Majesty, in taking military possession of Cuxhaven. When the undersigned had the honor of transmitting to his Excellency the verbal note of the 16th, it was not exactly known "that the Prussian vessel brought into that port had been restored." The fact being now certain, as well as the zeal manifested by the Senate of Hamburg to fulfil the wishes of the King, the surprise and consternation excited from the moment when the orders for marching a detachment of troops were known, would be raised to their utmost height, if it were ascertained, that, notwithstanding the complete satisfaction given to His Prussian Majesty on all the points respecting which he thought proper to complain, he should not appear less attached to his determination of causing Cuxhaven to be occupied by his troops. In fact, it appears at first sight that this occupation would be so calculated to give the most serious alarms to all commercial nations, that, without alluding to the interpretations which calumny might be desirous of giving to the measure, strong hopes are entertained from the justice and moderation of His Prussian Majesty, for that reason only, that he will not come to the resolution of carrying it into effect.

The undersigned would not, however, think he had executed his duty, should he neglect to represent to his Excellency the lively alarms which necessarily result from the uncertainty in which the affair remains. The reiterated assurances which the undersigned has received from his Excellency of the friendship and good wishes of His Prussian Majesty towards the King of Great Britain, do not allow him to believe that any mis-understanding can arise between the two Courts; but he can not avoid thinking that the enemies of humanity and public tranquillity will endeavor to turn to their purposes the alarm which is generally diffused, in order to scatter discord among the Powers, which will all unite and maintain the safety and independence of Europe at large.

(Signed) CARYSFORT

¹*Collection of State Papers*, vol. 11, p. 199.

Order of His Majesty the Emperor of Russia relative to the Embargo on English Vessels, November 18, 1800¹

The crews of two English vessels in the port of Narva having, at the approach of the military force instructed to arrest them, in conformity with the decreed embargo, resisted; fired their pistols, and sunk a Russian vessel, and thereupon having weighed anchor and taken flight, His Imperial Majesty has seen fit to order the burning of a vessel which had remained in that port.

ST. PETERSBURG, *November 21.*

As a result of information received from Palermo, with regard to the part played in the taking of Malta by Italinskoi the present Chamberlain, it has pleased the Emperor to have delivered to the members of the diplomatic corps residing at his Court a note, signed by the Presiding Minister of the Department of Foreign Affairs, Count Rostopsin and by the Vice Chancellor, Count Panin, of the following tenor:

His Majesty the Emperor of all the Russias has received detailed information concerning the surrender of Malta, confirming the report that, in spite of repeated representations, both on the part of his Minister at Palermo and of the Ministry of His Sicilian Majesty, the English commanders have taken possession of Valetta and the Island of Malta in the name of His Majesty the King of Great Britain, and that they have raised their flag there to the exclusion of all others. His Majesty, justly irritated by such a violation of good faith, has therefore resolved not to raise the embargo placed upon English vessels in the ports of Russia until the stipulations of the convention concluded in 1798 have been fully complied with.

Reply of Count Haugwitz to Lord Carysfort, November 20. 1800²

The undersigned, Minister of State and of the Cabinet, is authorized by the orders of the King to completely tranquillize the anxieties

¹From the Court Gazette. Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 155.

²*Collection of State Papers*, vol. 11, p. 200.

and apprehensions which my Lord Carysfort, Envoy Extraordinary and Minister Plenipotentiary of His Britannic Majesty, expressed to him in his two notes of the 16th and 18th of November. The Prussian vessel, the *Triton*, has, it is true, been restored to its owner; but the mode of release was in every respect as irregular as the proceedings which had previously taken place with respect to it; and after an examination of all the circumstances relative to the incident which forms the subject of complaint, there appears throughout the whole a manifest infraction of the principles of the neutrality of the north of Germany. It is this superior consideration, added to the unjust refusal of the magistracy of Hamburg, which dictated to the King the resolution of causing a body of his troops to occupy the port of Cuxhaven, and the bailiwick of Ritzebüttel. This measure was executed the moment it was determined upon, and it is no longer capable of being revoked, the example of what has taken place, imposing on His Majesty the necessity of effectually watching over the maintenance of that neutrality which he has guaranteed to his coestates. The King can not imagine that His Britannic Majesty, after participating, in his character of Elector of Hanover, in the advantages and benefits of this happy neutrality, can conceive the smallest alarm at seeing a Prussian garrison enter into the port which England has fixed on as her point of communication with the north of Germany. Being thus placed under the immediate guarantee of the King, it will be the more effectually put out of the reach of all violation, and the troops of His Majesty will have no other duty to perform than that of causing the laws of good order and equity to be respected. The utmost confidence may be placed in the prudent dispositions of the reigning Duke of Brunswick, who is invested with the command of the line of demarcation.

But, if more particular assurances be requisite upon this subject, the King feels a pleasure in giving them by the present communication to His Britannic Majesty, and in declaring to him, in express and positive terms, that the present order of things will in no respect interrupt the freedom of commerce and navigation in the port of Cuxhaven; nor, above all, the continuation of the correspondence with England. On the contrary, the officer commanding the troops of the King garrisoned in the bailiwick of Ritzebüttel, will make it his duty to give it every possible facility.

On the whole, the proceeding which the King has, from necessity,

been obliged to follow, does not admit of any equivocal interpretation. It has no other object than the maintenance of the system of which he is the author and defender; and this object shall not be exceeded. His views and conduct have procured him the confidence of all Europe, and they never will be found inconsistent; and though it is not to be anticipated that the other Powers will be disposed to misconceive the purity of his views in the present case, yet His Majesty reserves to himself the privilege of explaining himself further and in a suitable manner to those who may be entitled to such explanation.

(Signed) HAUGWITZ

Proclamation of the King of Prussia, November 23, 1800, announcing the Occupation of Ritzebüttel and Cuxhaven¹

By express order of His Prussian Majesty, Frederick William III, my most gracious sovereign, announcement is made that the temporary occupation of the District of Ritzebüttel and Cuxhaven by the troops which I command and which are a detachment of the army of observation under orders to protect the armed neutrality of the north and of Germany, has been caused by the capture of a Prussian ship. The difference arising from this capture has at length been arranged after certain customary explanations and protestations of friendship.

But as the march of the troops, which became necessary as a result of the lack of success of the first explanations, had been ordered and was already partially executed, His Prussian Majesty deemed it advisable to proceed with the execution of the orders and to take possession of Ritzebüttel and Cuxhaven, in order to prevent similar disputes in future, and to make sure, for the greater security and observance of neutrality, of a place so important and so necessary to the States below the line of demarcation.

Such is the only object of the troops under my orders. As their head, my first desire is to preserve public security and tranquillity, particularly with regard to the system of neutrality; and not only will

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 165.

I uphold with all my forces the authority of the magistrates appointed by the city of Hamburg, but I shall also protect the rights of all inhabitants or foreigners who come here in the course of their business, and especially in their commerce and navigation, which shall not be interrupted in the slightest degree, but, on the contrary, better protected and encouraged, without the least alteration in the constitution and practices of the district which I am occupying.

All persons, therefore, who inhabit or happen to be in this district, are enjoined to show toward the troops that I command the same friendly regard and bearing as these troops have toward them, and thereby avert the inevitable fatal consequences, which would result from the opposite attitude.

**Explanatory Answer to the Observations on the subject of the
Capture of Neutral Ships, December 16, 1800¹**

The late misunderstanding between the Danish and British Governments is now happily removed by a convention alike satisfactory to both nations, and that harmony again restored between the two Courts, which for a moment had been interrupted. The scandalous reports that this interruption gave birth to, are now refuted by evident facts; the fantastical notion of great and extensive plans, formed by the northern Powers for diminishing the trade and navigation of Great Britain, has vanished; and we see, in the clearest manner, the fair and honorable conduct of a State, which certain persons have not been ashamed rashly to accuse of assisting a commerce carried on contrary to treaties, by affording the protection of its ships of war to vessels laden with contraband. Of the six ships which were captured under convoy of the *Freya* frigate, the cargoes were most minutely examined; the result, however, was, that not only the smallest particle of contraband commodities could be discovered, but not even the least proba-

¹*Collection of State Papers*, vol. 11, p. 180. This paper was written in answer to the preceding publication issued by a noble Lord. It is of high importance, as it discusses the great question which now interests the public. It has only been circulated in private, but it is supposed to carry with it an authority almost official.

bility of any hostile or illicit interest being mingled in the property; such an event was, doubtless, but little expected by those persons who have been already alluded to; it disappointed their wishes, it baffled their endeavors to disseminate the seed of national hatred and rancor amongst their countrymen, and, if possible, to extend the first dissatisfaction to an irremediable breach of amity, when perhaps the public disasters might afford them the opportunity of gratifying their private animosities or ambition; the reconciliation, on the contrary, which has taken place, will unite still closer two nations, between whom an old and unremitting friendship has subsisted; more especially, if to this public union be superadded a mutual confidence between the subjects of the respective countries; and if those impressions be removed, which such violent accusations frequently repeated, and even under the sanction of important names, must necessarily have left behind.

Amongst the various publications which have appeared in England upon this subject, some observations inserted in the *London Chronicle*, and other papers, and universally understood to have been written by a nobleman, who not only since resided at Copenhagen in a diplomatic character, are remarkable, as well from the implacable tone in which they are delivered, as on account of the magnitude of the charges contained in them. The reasons which might induce that noble Lord to so violent a display of hatred against Denmark, are pretty generally known, or it could not but create surprise in his readers, that such a stream of invectives should flow from the pen of a gentleman who had been lately invested with the high and respectable office of representing his sovereign at the Court of that very nation against which, though still in alliance, his invectives were directed; of a gentleman, whose situation at that Court must necessarily have made him acquainted with the many violations of neutral commerce, of which, either as the natural consequence of the principles adopted by the British Government, or as transgressions of their orders, such frequent and well-founded complaints had been made; lastly, of a gentleman who could not be ignorant of the many regulations which the Danish Government had made to prevent abuses, and which, had they been suffered to pass unnoticed, might indeed have rendered it questionable, how far the neutrality and intentions of Denmark were sincere. It would have been more honorable for his Lordship, more consistent with the public character which he had sustained, to have explained any misunderstandings that had arisen, to have soothed the irritation of men's

minds, and to have spoken the language of peace, at the time when a dangerous spark, fallen amongst the nations of the north, threatened to extend still further that general conflagration in which Europe was involved; his Lordship, however, has thought proper to display a very different way of thinking.

We will now examine accurately the charges contained in the above-mentioned publication. It is not of the actions of individuals of which he is complaining; it is of the general sentiments of a nation, of the intentions of its government: these are the objects of his attack. He accuses the northern Courts, and particularly that of Denmark, of looking with an eye of jealousy and envy at the commercial prosperity of Great Britain; he represents the Danes as a nation at semi-warfare with England, under the mask of neutrality; he warns his countrymen to be on their guard against "stiletto attacks and secret blows from beneath the neutral cloak of Denmark and Sweden"; he then goes on to assert, that "the illicit practices of neutrals assume the aspect of an hostile disregard to common usage and the law of nations, and appear to be countenanced by those very authorities, whose duty it is to check and suppress them"; in fine, he holds out Denmark in particular, "as the standard of the most unwarrantable proceedings ever ascribed to a nation in amity with His Majesty."

It is hard innocently to suffer under the pressure of circumstances, but one may sustain mere losses and be silent; it is afflicting to see one's property suddenly exposed to accidents, which threaten to annihilate at a blow those fruits of our labor which have been slowly and gradually acquired; an open attack rouses one's powers to resistance, and constancy will always find, in struggling for a good cause, means and resources which the assailant never thought of; but the most painful of all trials is to find one's self, when suffering, misrepresented and abused; nor can it be denied that his malice is the most effective, who, working upon the irritated passions, excites suspicion and hatred in the minds of nations which were, till then, united in mutual bonds of friendship and alliance.

It is not the intention of these sheets to renew the memory of an affair which should have rendered the author of the observations more cautious in what he published; much less do we propose to defend the actions of individuals, whose punishment (if they have really given cause for complaint) belongs solely to courts of justice; on the contrary, we shall confine ourselves to what the noble Lord has been

pleased to assert respecting the sentiments and general conduct of the Danish Government, taking, at the same time, the opportunity thoroughly to examine these pretended plans of commercial aggrandizement, which he so roundly accuses our nation of endeavoring to carry into effect.

With respect to the supposed jealousy of Denmark and her government, at the commercial prosperity of Great Britain, it is so totally forgotten, that, even in the course of the present war, by a new regulation of the customs, a variety of foreign articles, the importation of which was till then prohibited, are now permitted to be brought in, and of consequence a new channel of trade opened to other nations. Can it have escaped the reflection of any impartial observer, that such a change of commercial regulations is the very reverse of any plan on the part of Denmark to injure or diminish the trade of her neighbors; or that the English, whose ships are admitted to equal privileges with those of Danish subjects themselves, and whose industry and enterprise are so much greater, must be the principal gainers by this alteration? Upon the question, therefore, of the principles and spirit of the Danish Government, it is but reasonable if we insist upon being tried and adjudged by such measures.

With respect to those abuses of neutrality, which the noble Lord does not hesitate to represent as countenanced and supported by the Danish Government, it can not be denied, that some particular persons have, by their conduct, given cause for a reasonable suspicion of endeavoring, in their connections with foreigners, improperly to convert the laws and treaties of their country to their private advantage. The question however is, whether the Danish Government (whose duty it never can be pretended to be, to put arbitrary bounds to the lawful commercial profits of its subjects) has ever taken any steps towards preventing such abuses as might justly supply occasion for complaint; whether, both before and after the commencement of the present war, laws have not been published, and other measures taken, the grand object of which was to preserve the trade of Denmark within the limits prescribed by treaty, by checking the fraudulent designs of certain unprincipled individuals; and, finally, whether those offenders, whose transgressions have come to the knowledge of the magistrates, have been brought to public justice, and punished as they deserved?

Immediately upon the commencement of maritime operations in the present war, the necessary qualities and duties of those persons who

were desirous, either as ship-owners or masters, to enjoy the advantages which the happy neutrality of Denmark seemed to offer, were most minutely and accurately defined by two royal ordonnances, dated 22d and 23d of February, 1793. According to the rule laid down in these ordonnances, every person who solicited a royal passport must be a Danish citizen, settled within the King's dominions, that is to say, having a fixed abode, the domicile and residence, if married, of his family, and if not, of himself, when not occasionally absent upon business; he must also, if thus qualified as a citizen, be provided with a certificate from the proper magistrates, stating his declaration upon oath before them, either that the ship is solely his property, or, if there be coowners, that every one of them without exception is a Danish subject; together with a clause also upon oath, that the ship is not laden with any articles declared to be contraband by any treaty, nor with goods belonging to any of the belligerent Powers or their subjects. It is not till after the fulfilment of all these conditions, that a passport can be issued, which even then, in order to prevent all possible abuses by a second expedition, is valid only for a single voyage, that is, till the return of the ship to some port in Denmark. It must be further observed, that all those vessels which are intended to sail beyond Cape Finisterre, must be provided with other passports, grantable to none but such as have already been Danish citizens for the space at least of three years. I shall pass over the further obligations binding on ship-owners, as to other needful documents for their vessels; such are the builder's brief, bill of sale, measuring-bill, muster-roll, etc., etc., and proceed to a few necessary explanations on the two subjects of contraband and admission to the rights of burgher or citizen.

Upon the breaking out of the present hostilities, a very considerable number of persons delivered in petitions, praying to be admitted to the privileges of the burghership, some with intent to settle in a country exempted from the horrors of war; others, that, in their respective characters of mariners, or ship-masters, they might again obtain employment in that way of life in which they had been educated, and which could now no longer be had in their native countries: this was more especially the case in His Majesty's German dominions, which being situated nearer to the scene of war, seemed, upon that account, to require more particular attention. The precaution, therefore, which had been taken by the ordonnances of the 22d and 24th of December, 1796, by which it was decreed, that, besides the condi-

tions already detailed, no married man should be admitted to the rights of a burgher, whose family resided in any other place than that in which he was a candidate for the burghership; and that every captain or master of a vessel should find undeniable security to the amount of 200 rix-dollars, which security was not to be released till the expiration of five years; a space of time considered as sufficient to determine whether he entertained a real intention of settling forever within the territories of His Danish Majesty. It was further directed, in order to prevent foreigners from settling in the villages or in the country, where they might easily withdraw themselves from the eyes of the police, that no stranger should be permitted to exercise the profession of a mariner, unless he became a burgher of some commercial town or other place entitled to the same privileges. When these facts and ordonnances are compared with what the noble Lord has been pleased to advance as to the facility of Danish burghership, asserting, "that the privileges of being admitted to the rights of a burgher in each Danish city, is sold to the first comer, without any attention being paid whether the person is a Cherokee Indian, Mandingo negro, English or Dutchman," one can not but be led to suspect that the accusation is founded on something else than mere ignorance of the real situation of affairs.

Nor less extraordinary is the charge which the noble Lord has ventured to make with respect to contraband. "The harbors," says he, "of Carthage, Cadiz, Ferrol, Toulon, L'Orient, Brest, and Rochefort, have received all their naval stores from the hands of neutrals": and then he goes on to impeach the Danish flag, as taking the principal share in this illicit commerce. It is only the consummate assurance with which this accusation is made by the pen of a man of his rank and office, that can, perhaps, for a moment procure it credit with a few of his countrymen. If, indeed, the Government of Denmark has, upon any point, made use of peculiar precautions to secure itself from blame or suspicion, it has been upon this. Exclusive of the rules laid down in the afore-mentioned royal ordonnances, another decree was promulgated on the 28th of March, 1794, under a supposition that some abuses had taken place; in this the exportation of every species of contraband to a belligerent State is severely prohibited: and in case of the shipment of such articles for neutral ports, the ship-owners are bound to deliver to the proper magistrates certificates of the arrival and unloading of these articles at the respective neutral ports to which

they had been avowedly destined. We will venture to assert, that no commercial nation ever before adopted such strong and effectual means to avoid and secure itself from any reproach of this sort; and we defy, in the face of all Europe, the noble Lord, and all our other open and secret enemies, to produce a single fact to prove, that from this period there has been exported from any Danish port any contraband of war destined to any port of a belligerent. Had his Lordship been acquainted with such an instance, he had the means of preferring his complaints in the name of his nation, with the most positive certainty of obtaining all possible satisfaction. Such an odious insinuation, therefore, whether originating from the noble Lord himself, or from some other person, of whose secret malice he may not have been aware, thrown out too in general expressions, without proof, without instancing a single fact, and at a time when fears and anxieties pervaded every bosom, can not but render the motive to it extremely suspicious.

The ordonnance of July 25, 1798, concerning the merchantmen from Fleckerøe, contained also the strictest regulations that can well be devised for preventing the secret conveyance of military contraband by the Danish merchant ships sailing under convoy: the result has fully demonstrated the efficacy of these measures; and the severity which has been displayed in punishing every offense against these regulations, when publicly denounced and legally proved, must convince every impartial observer, that the Danish Government was seriously resolved not to suffer the violation of its laws. The partners in a mercantile house in Copenhagen, against whom an information was laid at the suit of the King's attorney, for an abuse with respect to royal sea passes, have long since been exiled: another person, a ship-owner, who had sold his name as a cover for vessels belonging to belligerents, was punished with banishment, his name rendered infamous, and his property confiscated; and even at this moment several prosecutions of the same nature are pending before the tribunals. So much by way of reply to the naked assertion of the noble Lord, that any illicit and fraudulent practices of neutralization are favored and supported by those very authorities upon whom it is incumbent to prevent the flag from being abused, and to watch over the lawful course of commerce.

But our author, who is, it seems, fully instructed in the secret springs which actuate the northern Powers, and Denmark in particular, supplies us with some perfectly new, and indeed unexpected illustrations. Great plans, says he, were formed for monopolizing the trade and navi-

gation of the Dutch into Danish hands; for covering the trade to the French and Dutch West India settlements, and converting it to their own profit: the whole traffic of the Mauritius was carried on through Danish hands; the settlement at Batavia was alone, by their means, preserved to the mother country; the hostile design of interrupting the commerce of Britain became prevalent throughout the nation; and the Government found itself as unable to resist the temptation of levying taxes and imposing duties upon this commerce, as the merchants were of monopolizing it.

The strong and obvious reply which everybody acquainted with the subject must make to the accusation, is this, that the Danish Government never has interfered, nor does it now in the smallest degree, with the commerce of its subjects; it acknowledges it to be its duty to promote the prosperity of the country by every proper support on its part; to protect every fair branch of industry; and, as far as may be in its power, to promote every natural and accustomed trade, and secure it from molestation; but as to speculations, it leaves these entirely to the individuals who make it their business to avail themselves of times and circumstances, according to their skill: in such cases it only interferes when compelled to act either as a judge of the actions of its subjects, or as their protector against unjust attacks. With respect to the revenues which the Danish Government derives from the trade carried on by its subjects, it is indeed extraordinary how these can be an object of reproach in the mouth of the subject of a country, which from her own commerce, extended over every ocean, collects the most considerable part of her revenue, and the most efficacious means of greatness. In Denmark these duties are so moderate, that they may be considered as barely furnishing the supply necessary for those various charges of the State, which the conduct of the belligerents, and the precautions requisite for securing trade from absolute destruction, have occasioned; and the Government has always been willing to forego a part the moment it appeared likely to produce misunderstanding or inconvenience; such, for instance, was the revoking the liberty granted of carrying freights from the East Indies to ports in Europe (a privilege then used by only four vessels), as soon as it was apprehended that its further use might give rise to abuses, and cause complaints on the part of the belligerent Powers: such, also, was its putting a stop to the distribution of those passports, which, in a few instances, had been granted to Danish ship-owners in Europe for such

vessels as they had given instructions to purchase in the East Indies.

But to return to the commercial projects pretended by our author to have been formed by Denmark, and to the question of whether there really does exist a plan for monopolizing the French and Dutch East and West India trade: I can not but think such an accusation rather singular from an English statesman, who certainly ought not to have been ignorant that his countrymen, even before his publication came out, had rendered the very idea of such a design impossible, by seizing on the greatest part of the French and Dutch settlements both in the East and West Indies: such a plan too must have been discovered by efforts in some degree at least corresponding with the greatness of the undertaking. If, therefore, the case be otherwise, the noble Lord must forgive us for treating the suggestion as altogether a chimera of his own brain, and the facts which follow will throw some light upon the subject.

According to the best statistical accounts, the French trade in the West Indies before the revolution, employed every year 600 vessels, each, upon an average, of 250 tons: the Dutch trade to Surinam, and the other West India settlements, required every year about 107 vessels. The Dutch East India Company sent every year to Batavia between 20 and 30 large vessels; and the French trade to the Mauritius, Bourbon, and the coast of Guinea, employed about 180 vessels.

It might be foreseen that a part of this trade, during a war between the great maritime Powers, would fall into neutral hands; and a nation, which owes its flourishing condition to the extent of its trade, can not take it amiss that the merchants of other countries also know how to make use of conjunctures: but what proportion do our commercial undertakings bear with respect to the plans supposed to be formed by us?

For the Danish trade to the West Indies, only the following passports have been distributed throughout all the Danish dominions:

In the year 1797, to vessels bound for St. Croix, 23; for St. Thomas, 21; for St. Croix and St. Thomas together, 25; for the West Indies, without mentioning any place in particular, 5; for foreign settlements in the West Indies, 12.

In the year 1798, for St. Croix, 26; for St. Thomas, 22; for St. Croix and St. Thomas together, 18; for the West Indies in general, 1; for foreign settlements in the West Indies, 9.

In the year 1799, for St. Croix, 28; for St. Thomas, 18; for St.

Croix and St. Thomas together, 19; for the West Indies in general, none; for foreign settlements in the West Indies, 10.

Returned from the East Indies, besides those ships that belong to the East India Company, and which only carry on a direct trade to the settlements belonging to Denmark:

In the year 1797, eleven vessels for private account, five of which were from the Danish settlements at Tranquebar, and in Bengal: the other six from the different European settlements at the Cape of Good Hope, and east of it;

In the year 1798, thirteen ships for private account, four of which were sent from the Danish, the rest from other European settlements.

In the year 1799, likewise thirteen ships for private account, four of which also were from the Danish settlements.

If to these be added one single vessel which has unloaded a cargo, chartered in the East Indies upon freight to a port without the Danish dominions, this is a complete list of all the vessels returned from the East Indies for the account of private owners during the above-mentioned years.

The comparison of this list, with the many hundred vessels which were occupied in the French and Dutch East and West India trade, will fully enable the reader to judge of the reality of the plans and operations of commerce, said, by the noble Lord, to be adopted by us, as well as of the amount of our profit, greatly lessened by the frequent captures of many valuable cargoes. If, at the same time, it is considered that a trade to all the different corners of the world occupies the speculations of Danish merchants even in the most profound peace, and has occasioned a proportionable number of regular expeditions, the increase of our commerce in these branches, the direct trade to our own settlements being deducted, will hardly justify any jealous apprehension, or be looked upon as an encroachment upon the commerce of Great Britain.

That the charge of hostile endeavors to diminish the trade of Great Britain is not founded upon real fact, or upon any injuries done to that country, is fully demonstrated by taking a general view of its traffic. The mercantile fleet of Great Britain covers every sea; and in every session of Parliament, the Minister himself congratulates his nation on account of the flourishing state of its commerce, which, during the course of the present war, has arrived to a height beyond any example of preceding times. The value of the import trade of

Great Britain has arisen from 17,804,024*£* to which it amounted in the year 1787, to above 24 millions, which was the amount in the year 1798. The export, which in the year 1787 amounted to 16,870,114*£* was in the year 1798 announced to be 33,655,396*£*. In the year 1792, 284 vessels arrived in the river Thames from the British settlements in the West Indies. In the year 1798, their number was increased to 347. The maritime trade of London has, since the year 1792, according to accounts laid before Parliament, been augmented by 1,000 vessels from foreign ports, and the trade of the whole country in proportion. After such proofs, it must be plain in what light complaints of encroachments upon British commerce are to be considered.

Denmark has not been so fortunate in the increase of her commerce, and in the undisturbed enjoyment of those advantages, to which her neutrality (a neutrality not maintained without many sacrifices) ought justly to have entitled her. If, indeed, her trade, during the first years of the war, was considerably augmented, those advantages have, however, of late remarkably decreased, and some sources have been entirely lost, partly by occurring circumstances, and partly by the system adopted by Great Britain. The shipping of Denmark has of late evidently diminished. The rigorous measures of the British Government; the extended instructions given to their ships of war and privateers, joined to the frequent and vexatious conduct of the latter in even going beyond these instructions; the assumed authority of the tribunals, and, in particular, the unwarrantable proceedings of the inferior courts of admiralty out of Europe, together with the slow progress of suits in the superior courts of justice: these, and other circumstances, the recital of which would exceed the limits of this answer, have not failed, by their influence, to destroy our trade in the first moments of its prosperity.

By declaring even principal ports to be in a state of blockade, during the last two years, Great Britain has stopped the most considerable channels of Danish commerce, which is not so much founded on mere speculation, as on the export and import of mutual necessities. In cases of blockade, the rights of the blockading Power have received an extension, which is neither founded on common usage, nor on the law of nations. Is it reasonable that a mere declaration should be sufficient to repel all neutral ships from the entire coasts of a country, even when there is not an armed vessel to be seen for the purpose of effecting the blockade? Nay, for a neutral to have left a port blocked

up in this manner, and at which she had arrived before that declaration, has been esteemed a crime to be punished with condemnation. Between the declarations of all the Dutch harbors being in a state of blockade, and the end of August in the present year, 120 Danish vessels have been captured by the English: some of which are condemned, others restored, and several still waiting judgment in the first instance. Besides these, not less than 60 undecided cases are pending in the court of appeals: the dates of some of these are very old, and they are all of importance. It is, moreover, almost grown into a rule, that when the neutral owner, after such a long delay, which is quite contrary to treaty, has at length obtained judgment in his favor, neither the expenses nor interest are to be paid to him. I shall remain silent as to the many injustices committed, as well by privateers as by the tribunals in the West Indies, where cargoes, consisting of Danish produce, in vessels, of which there was not the smallest doubt of their being Danish, and bound for Danish settlements, have been confiscated without the least compunction, and that on the most unreasonable grounds. This may be sufficient to prove, that Denmark, much rather than Great Britain, is entitled to complain of encroachments on her trade, and of commercial jealousy.

What the noble Lord finally has been pleased to say of the political strength of Denmark, lies not within the bounds of this essay. He may, however, rest assured, that Denmark, in the wisdom of her Government and in the patriotism of her subjects, will always find effectual means to defend herself and maintain her rights; and that this brave nation, on whom he endeavors to throw an odium, does not yield in patriotism and fidelity to the Government of any other nation upon earth.

December 16, 1800.

**Convention between Russia and Sweden for the Reestablishment of
an Armed Neutrality, December 16, 1800¹**

In the Name of the Most Holy and Indivisible Trinity:

The freedom of navigation and security of commerce of neutral

¹Translation. French text at Martens, *Recueil de Traité*s, vol. 7, p. 173. Accepted and ratified by His Swedish Majesty on December 20, and by His Imperial Majesty of all the Russias on December 8/20 of the same year.

Powers having been compromised, and the principles of the law of nations having been disregarded in the present naval war, His Majesty the King of Sweden and His Majesty the Emperor of all the Russias, led by their love of justice and by an equal solicitude for all that may contribute to public prosperity in their States, have deemed it advisable to give a new sanction to the principles of neutrality, which, indestructible in their essence, require only the cooperation of the governments interested in their maintenance to make them respected. With this view His Imperial Majesty has manifested, by the declaration of August 15 to the Courts of the North, to whose interest likewise it is to adopt uniform measures under similar circumstances, how greatly he has at heart the reestablishment, in all its inviolability, the right common to all peoples to navigate and to carry on commerce freely and independently of the temporary interests of belligerent parties. His Swedish Majesty shares the desires and sentiments of his august ally, and a happy likeness of interests, strengthening their mutual confidence, has determined them to reestablish the system of armed neutrality, which was followed with such success during the last American war, by renewing its beneficent maxims in a new convention adapted to present circumstances.

To this end, His Majesty the King of Sweden and His Imperial Majesty of all the Russias have appointed as their plenipotentiaries, to wit: His Swedish Majesty, Baron Court of Stedingk, one of the Lords of the Kingdom of Sweden, his Ambassador Extraordinary to His Imperial Majesty of all the Russias, Lieutenant General in his Armies, Chamberlain of the Queen Dowager, Colonel of a Regiment of Infantry, Chevalier Commander of his Orders, Grand Cross Chevalier of his Order of the Sword, and Chevalier of the French Order for Military Merit: and His Imperial Majesty of all the Russias, Count Theodor de Rostopsin, his Privy Councilor, Member of his Council, Principal Minister of the College of Foreign Affairs, Postmaster General of the Empire, Grand Chancellor and Grand Cross of the Sovereign Order of St. John of Jerusalem, Chevalier of the Orders of St. Andrew, of St. Alexander Newsky, and of St. Anne of the First Class, of the Orders of St. Lazare, of the Annunciation, of St. Ferdinand, of St. Maurice and of St. Lazare, of St. Ferdinand and of St. Hubert: who having exchanged their respective full powers have agreed upon the following articles:

ARTICLE 1

His Majesty the King of Sweden and His Majesty the Emperor of all the Russias declare their desire to see to the strictest enforcement of the prohibition of commerce in contraband on the part of their subjects with any of the Powers whatsoever now at war or that may hereafter enter into the war.

ARTICLE 2

To avoid any ambiguity and any misunderstanding regarding what should be considered contraband, His Majesty the King of Sweden and His Imperial Majesty of all the Russias declare that they recognize as such only the following articles, to wit: cannon, mortars, firearms, pistols, bombs, grenades, bullets, balls, guns, gun flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, swordbelts, cartridge-boxes, saddles and bridles, except such quantities thereof as may be necessary for the defense of the vessel and of those composing its crew; and all other articles whatsoever not here enumerated shall not be considered war or naval munitions, nor shall they be subject to confiscation, and consequently they shall pass freely and shall not be subjected to the slightest difficulties. It is also agreed that the present article shall in no way impair the special provisions of previous treaties with the belligerent Parties, by which articles of a similar nature may have been reserved, prohibited, or permitted.

ARTICLE 3

All that is to be considered contraband having thus been determined and excluded from the commerce of neutral nations, in accordance with the terms of the preceding article, His Majesty the King of Sweden and His Imperial Majesty of all the Russias intend and desire that all other trade shall be and remain absolutely free. In order to safeguard adequately the general principles of the natural law, of which freedom of commerce and navigation, as well as the rights of neutral peoples, is a direct consequence, Their Majesties have resolved to leave them no longer at the mercy of an arbitrary interpretation that may be influenced by isolated and temporary interests. To this end they have agreed:

(1) That all vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband goods.

(3) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have disposed and stationed its vessels sufficiently near to render access thereto clearly dangerous, and that no vessel sailing toward a blockaded port shall be considered as having contravened the present convention, unless, after having been notified by the commanding officer of the blockading fleet of the condition of the port, it shall attempt, either by force or by ruse, to enter therein.

(4) That neutral vessels may not be arrested except for just cause and for self-evident acts; that their cases shall be tried without delay; that the procedure shall always be uniform, prompt, and legal; and that in every instance, in addition to the indemnities granted to those who have suffered loss, without having been at fault, complete satisfaction shall be rendered to the flag of Their Majesties.

(5) That the declaration of the commanding officer of the vessel or vessels of the Royal or Imperial Navy, which accompanies the convoy of one or more merchant ships, that his convoy carries no contraband goods, must be considered sufficient, and that thereupon there shall be no occasion to visit either his vessel or those of his convoy.

The better to ensure to these principles the respect due to stipulations dictated by a disinterested desire to maintain the inalienable rights of neutral nations, and to give further proof of their devotion to and love of justice, the high contracting Powers, hereby bind themselves most solemnly to issue new and strict orders forbidding their captains, whether of ships of the line or of merchant ships, to load, hold, or conceal on board any articles which, by the terms of the present convention, might be considered contraband, and to see, respectively, to the execution of the orders that they shall have published in their admiralties and wherever else it may be necessary, with a view to which the ordinance, which shall renew this prohibition under the severest penalties, shall be printed at the end of the present act, in order that there may be no allegation of ignorance thereof.

ARTICLE 4

To protect the commerce of their subjects in common on the basis of the principles hereinbefore laid down, His Majesty the King of

Sweden and His Imperial Majesty of all the Russias, have seen fit to equip separately a number of war-ships and frigates proportional to this object, as the squadrons of each Power will have to take their station and to be used for such convoying as its commerce and its navigation may require, in conformity with the nature and the quality of the trade of each nation.

ARTICLE 5

To prevent the annoyances that may arise as the result of the bad faith of those who make use of the flag of a nation to which they do not belong, it is agreed to lay down as an inviolable rule that, for a vessel to be considered as the property of the country whose flag it flies, its captain and half of its crew must belong to that country, and it must have on board papers and passports in good and due form; but any vessel that shall not observe this rule and that shall contravene the published ordinances to this effect, printed at the end of the present convention, shall lose all right to the protection of the contracting Powers, and the government to which it belongs shall bear alone the losses, damages, and annoyances that may result therefrom.

ARTICLE 6

If it should happen, however, that the merchant ships of either of the Powers should be in waters where the war-ships of the same nation are not stationed and where they could not have recourse to their own convoys, then the commanding officer of the war-ships of the other Power must, if requested, give them, sincerely and in good faith, the assistance that they may need, and in such case, the war-ships and frigates of either of the Powers shall act as a support and protection to the merchant ships of the other; it being understood, however, that those asking such aid shall not have engaged in any commerce that is illicit or contrary to the principles of neutrality.

ARTICLE 7

This convention shall have no retroactive effect, and consequently no action shall be taken with respect to differences which may have arisen before its conclusion, unless it is a question of continuous acts of violence, tending to establish an oppressive system for all the neutral nations of Europe in general.

ARTICLE 8

If, in spite of the most scrupulous care on the part of the two Powers and in spite of the observance of the most complete neutrality by them, merchant ships of His Majesty the King of Sweden or of His Imperial Majesty of all the Russias should be insulted, pillaged, or taken by the war-ships or privateers of either of the Powers at war, then the Minister of the injured party to the government whose war-ships or privateers shall have committed such acts shall make representations, demand the seized merchant ship, and insist upon suitable indemnification, never losing sight of the reparation due for the insult to the flag. The Minister of the other contracting Party shall join with him and support his complaints in the most energetic and effectual manner, and they shall thus act in concert and in perfect accord. If justice should be refused on these complaints, or if the rendering of justice should be postponed from time to time, then Their Majesties shall employ reprisals against the Power so refusing, and they shall take counsel with each other as to the most effectual method of carrying out such reprisals.

ARTICLE 9

If either of the two Powers or both of them, because of or in contempt of the present convention, should be disturbed, molested, or attacked, it is likewise agreed that they shall make common cause for their mutual defense and shall work and act in concert to secure full and complete satisfaction both for the insult to their flag and for the losses caused to their subjects.

ARTICLE 10

The principles and the measures adopted by the present act shall be applicable also to all naval wars, which may unfortunately arise to disturb Europe. These stipulations shall therefore be regarded as permanent and shall constitute the rule for the contracting Powers in the matter of commerce and navigation, whenever there shall be occasion to pass upon the rights of neutral nations.

ARTICLE 11

The principal aim and object of this convention being to ensure general freedom of commerce and navigation, His Majesty the King

of Sweden and His Imperial Majesty of all the Russias agree and bind themselves in advance to permit other neutral Powers to accede hereto, and that by adopting the principles they shall share the obligations as well as the advantages.

ARTICLE 12

In order that the Powers at war may not allege ignorance of the arrangements concluded between their said Majesties, they agree to bring to the knowledge of the belligerent parties the measures which they have together adopted, which are all the less hostile because they are not detrimental to any other country, for they tend solely to protect the commerce and navigation of their respective subjects.

ARTICLE 13

The present convention shall be ratified by the two contracting parties, and ratifications thereof shall be exchanged in good and due form within six weeks, or sooner if possible, from the day on which it is signed.

In faith whereof, we, the undersigned, by virtue of our full powers, have signed and hereto affixed the seal of our arms.

Done at St. Petersburg, December 4/16, 1800.

[L. S.] COURT STEDINGK

[L. S.] COUNT DE ROSTOPSHIN

Convention between Russia and Denmark for the Reestablishment of an Armed Neutrality, December 16, 1800¹

In the Name of the Most Holy and Indivisible Trinity:

The freedom of navigation and security of commerce of neutral Powers having been compromised, and the principles of the law of nations having been disregarded in the present naval war, His Majesty the Emperor of all the Russias and His Majesty the King of Denmark and Norway, led by their love of justice and by an equal solici-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 182. Accepted and ratified by His Russian Majesty on February 20, 1801.

tude for all that may contribute to public prosperity in their States, have deemed it advisable to give a new sanction to the principles of neutrality, which, indestructible in their essence, require only the co-operation of the governments interested in their maintenance to make them respected. With this view His Imperial Majesty has manifested, by the declaration of August 15 to the Courts of the north, to whose interests likewise it is to adopt uniform measures under similar circumstances, how greatly he has at heart the reestablishment, in all its inviolability, of the right common to all peoples to navigate and to carry on commerce freely and independently of the temporary interests of belligerent parties. His Danish Majesty shares the desires and sentiments of his august ally, and a happy likeness of interests, strengthening their mutual confidence, has determined them to reestablish the system of armed neutrality, which was followed with such success during the last American war, by renewing its beneficent maxims in a new convention adapted to present circumstances.

To this end, His Majesty the Emperor of all the Russias and His Majesty the King of Denmark and Norway have appointed as their plenipotentiaries, to wit: His Imperial Majesty, Count Theodore de Rostopsin, His Privy Councilor, Member of His Council, Principal Minister in the College of Foreign Affairs, Postmaster General of the Empire, Grand Chancellor and Grand Cross of the Sovereign Order of St. John of Jerusalem, Chevalier of the Orders of St. Andrew, of St. Alexander Nevsky, and of St. Anne of the First Class, of the Orders of St. Lazare, of the Annunciation, of SS. Maurice and Lazare, of St. Ferdinand and St. Hubert; and His Danish Majesty, Niels de Rosenkrantz, His Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of all the Russias, his Chamberlain and General Aide-de-Camp; who, after having exchanged their respective full powers, have agreed upon the following articles:

ARTICLE 1

His Majesty the Emperor of all the Russias and His Majesty the King of Denmark and Norway declare their desire to see to the strictest enforcement of the prohibition of commerce in contraband on the part of their subjects with any of the Powers whatsoever now at war or that may hereafter enter into the war.

ARTICLE 2

To avoid any ambiguity and any misunderstanding regarding what should be considered contraband, His Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway declare that they recognize as such only the following articles, to wit: cannon, mortars, firearms, pistols, bombs, grenades, bullets, balls, guns, gun flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, swordbelts, cartridge-boxes, saddles and bridles, except such quantities thereof as may be necessary for the defense of the vessel and of those composing its crew; and all other articles whatsoever not here enumerated shall not be considered war or naval munitions, nor shall they be subject to confiscation, and consequently they shall pass freely and shall not be subjected to the slightest difficulties. It is also agreed that the present article shall in no way impair the special provisions of previous treaties with the belligerent parties, by which articles of a similar nature may have been reserved, prohibited, or permitted.

ARTICLE 3

All that is to be considered contraband having thus been determined and excluded from the commerce of neutral nations, in accordance with the terms of the preceding article, His Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway intend and desire that all other trade shall be and remain absolutely free. In order to safeguard adequately the general principles of the natural law, of which freedom of commerce and navigation, as well as the rights of neutral peoples, is a direct consequence, Their Majesties have resolved to leave them no longer at the mercy of an arbitrary interpretation that may be influenced by isolated and temporary interests. To this end they have agreed:

(1) That all vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband goods.

(3) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have disposed and stationed its vessels sufficiently near to render access thereto clearly dangerous, and that no vessel sailing toward a

blockaded port shall be considered as having contravened the present convention, unless, after having been notified by the commanding officer of the blockading fleet of the condition of the port, it shall attempt, either by force or by ruse, to enter therein.

(4) That neutral vessels may not be arrested except for just cause and for self-evident acts; that their cases shall be tried without delay; that the procedure shall always be uniform, prompt, and legal; and that in every instance, in addition to the indemnities granted to those who have suffered loss, without having been at fault, complete satisfaction shall be given for the insult to the flag of Their Majesties.

(5) That the declaration of the commanding officer of the vessel or vessels of the Imperial or Royal Navy, which accompanies the convoy of one or more merchant ships, that his convoy carries no contraband goods, must be considered sufficient, and that thereupon there shall be no occasion to visit either his vessel or those of his convoy.

The better to ensure to these principles the respect due to stipulations dictated by a disinterested desire to maintain the inalienable rights of neutral nations, and to give further proof of their devotion to and love of justice, the high contracting Powers hereby bind themselves most solemnly to issue new and strict orders forbidding their captains, whether of ships of the line or of merchant ships, to load, hold, or conceal on board any articles which, by the terms of the present convention, might be considered contraband, and to see, respectively, to the execution of the orders that they shall have published in their admiralties and wherever else it may be necessary, with a view to which the ordinance, which shall renew this prohibition under the severest penalties, shall be printed at the end of the present act, in order that there may be no allegation of ignorance thereof.

ARTICLE 4

To protect in common the commerce of their subjects on the basis of the principles hereinbefore laid down, His Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway have seen fit to equip separately a number of war-ships and frigates proportional to this object, as the squadrons of each Power will have to take their station and be used for such convoying as its commerce and its navigation may require, in conformity with the nature and the quality of the trade of each nation.

ARTICLE 5

To prevent the annoyances that may arise as the result of the bad faith of those who make use of the flag of a nation to which they do not belong, it is agreed to lay down as an inviolable rule that, for a vessel to be considered as the property of the country whose flag it flies, its captain and half of its crew must belong to that country, and it must have on board papers and passports in good and due form; but any vessel that shall not observe this rule and that shall contravene the published ordinances to this effect, printed at the end of the present convention, shall lose all right to the protection of the contracting Powers, and the government to which it belongs shall bear alone the losses, damages, and annoyances that may result therefrom.

ARTICLE 6

If it should happen, however, that the merchant ships of either of the Powers should be in waters where the war-ships of the same nation are not stationed and where they could not have recourse to their own convoys, then the commanding officer of the war-ships of the other Power must, if requested, give them sincerely and in good faith, the assistance that they may need, and in such case, the war-ships and frigates of either of the Powers shall act as a support and protection to the merchant ships of the other; it being understood, however, that those asking such aid shall not have engaged in any commerce that is illicit or contrary to the principles of neutrality.

ARTICLE 7

This convention shall have no retroactive effect, and consequently no action shall be taken with respect to differences which may have arisen before its conclusion, unless it is a question of continuous acts of violence, tending to establish an oppressive system for all the neutral nations of Europe in general.

ARTICLE 8

If, in spite of the most scrupulous care on the part of the two Powers and in spite of the observance of the most complete neutrality by them, merchant ships of His Imperial Majesty of all the Russias or of His

Majesty the King of Denmark and Norway should be insulted, pillaged, or taken by the war-ships or privateers of any of the Powers at war, then the Minister of the injured party to the government whose war-ships or privateers shall have committed such acts shall make representations, demand the seized ship, and insist upon suitable indemnification, never losing sight of the reparation due for the insult to the flag. The Minister of the other contracting Party shall join with him and support his complaints in the most energetic and effectual manner, and they shall thus act in concert and in perfect accord. If justice should be refused on these complaints, or if the rendering of justice should be postponed from time to time, then Their Majesties shall employ reprisals against the Power so refusing, and they shall take counsel with each other as to the most effectual method of carrying out such reprisals.

ARTICLE 9

If either of the two Powers or both of them, because of or in contempt of the present convention, should be disturbed, molested, or attacked, it is likewise agreed that they shall make common cause for their mutual defense and shall work and act in concert to secure full and complete satisfaction for the insult to their flag and for the losses caused to their subjects.

ARTICLE 10

The principles and the measures adopted by the present act shall be applicable also to all naval wars, which may unfortunately arise to disturb Europe. These stipulations shall therefore be regarded as permanent and shall constitute the rule for the contracting Powers in the matter of commerce and navigation, whenever there shall be occasion to pass upon the rights of neutral nations.

ARTICLE 11

The principal aim and object of this convention being to ensure general freedom of commerce and navigation, His Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway agree and bind themselves in advance to permit other neutral Powers to accede hereto, and that by adopting the principles they shall share the obligations as well as the advantages hereof.

ARTICLE 12

In order that the Powers at war may not allege ignorance of the arrangements concluded between Their said Majesties, they agree to bring to the knowledge of the belligerent parties the measures which they have together adopted, which are all the less hostile because they are not detrimental to any other country, for they tend solely to protect the commerce and navigation of their respective subjects.

ARTICLE 13

The present convention shall be ratified by the two contracting Parties, and ratifications thereof shall be exchanged in good and due form within six weeks, or sooner if possible, from the day on which it is signed.

In faith whereof, we, the undersigned, by virtue of our full powers, have signed and hereto affixed the seal of our arms.

Done at St. Petersburg, December 4/16, 1800.

[L. S.] NIELS DE ROSENKRANTZ

[L. S.] COUNT DE ROSTOPSHIN

Convention between Russian and Prussia for the Reestablishment of an Armed Neutrality, December 18, 1800, and Supplementary Article¹

In the Name of the Most Holy and Indivisible Trinity:

The freedom of navigation and security of commerce of neutral Powers having been compromised, and the principles of the law of nations having been disregarded in the present naval war, His Majesty the Emperor of all the Russias and His Majesty the King of Prussia, led by their love of justice and by an equal solicitude for all that may contribute to public prosperity in their States, have deemed it advisable to give a new sanction to the principles of neutrality, which, indestructible in their essence, require only the cooperation of the governments

¹Translation. French text at Martens, *Recueil de Traité*s, vol. 7, p. 189. Accepted and ratified by the Russian Emperor, February 6, 1801.

interested in their maintenance to make them respected. With this view, His Imperial Majesty has manifested, by the declaration of August 15 to the Courts of the north, to whose interests likewise it is to adopt uniform measures under similar circumstances, how greatly he has at heart the reestablishment, in all its inviolability, of the right common to all peoples to navigate and to carry on commerce freely and independently of the temporary interests of belligerent parties. His Prussian Majesty shared the desires and sentiments of his august ally, and a happy likeness of interests, strengthening their mutual confidence, has determined them to reestablish the system of armed neutrality, which was followed with such great success during the last American war, by renewing its beneficent maxims in a new convention adapted to present circumstances.

To this end, His Majesty the Emperor of all the Russias and His Majesty the King of Prussia, have appointed as their plenipotentiaries, to wit: His Imperial Majesty, Count Theodor de Rostopsin, his Privy Councilor, Member of his Council, Principal Minister of the College of Foreign Affairs, Postmaster General of the Empire, Grand Chancellor and Grand Cross of the Sovereign Order of St. John of Jerusalem. Chevalier of the Orders of St. Andrew, of St. Alexander Nevsky, and of St. Anne of the First Class, of the Orders of St. Lazare, of the Annunciation, of SS. Maurice and Lazare, of St. Ferdinand and St. Hubert; and His Prussian Majesty, Count Spiridon de Lusi, Lieutenant General of Infantry of his Armies, his Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of all the Russias. Chevalier of the Order of the Red Eagle and of the Order of Merit who, having exchanged their full powers, have agreed upon the following articles:

ARTICLE 1

His Majesty the Emperor of all the Russias and His Majesty the King of Prussia declare their desire to see to the strictest enforcement of the prohibition of commerce in contraband on the part of their subjects with any of the Powers whatsoever now at war or that may hereafter enter into the war.

ARTICLE 2

To avoid any ambiguity and any misunderstanding regarding what should be considered contraband, His Imperial Majesty of all the

Russias and His Majesty the King of Prussia declare that they recognize as such only the following articles, to wit: cannons, mortars, fire arms, pistols, bombs, grenades, bullets, balls, guns, gun flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, swordbelts, cartridge-boxes, saddles and bridles, except such quantities thereof as may be necessary for the defense of the vessel and of those composing its crew; and all other articles whatsoever not here enumerated shall not be considered war or naval munitions, nor shall they be subject to confiscation, and consequently they shall pass freely and shall not be subjected to the slightest difficulties. It is also agreed that the present article shall in no way impair the special provisions of previous treaties with the belligerent parties, by which articles of a similar nature may have been reserved, prohibited, or permitted.

ARTICLE 3

All that is to be considered contraband having thus been determined and excluded from the commerce of neutral nations, in accordance with the terms of the preceding article, His Imperial Majesty of all the Russias and His Majesty the King of Prussia intend and desire that all other trade shall be and remain absolutely free. In order to safeguard adequately the general principles of the natural law, of which freedom of commerce and navigation, as well as the rights of neutral peoples, is a direct consequence, Their Majesties have resolved to leave them no longer at the mercy of an arbitrary interpretation that may be influenced by isolated and temporary interests. To this end they have agreed:

- (1) That all vessels may navigate freely from port to port and along the coasts of the nations at war.
- (2) That effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband goods.
- (3) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have disposed and stationed its vessels sufficiently near to render access thereto clearly dangerous, and that no vessel sailing toward a blockaded port shall be considered as having contravened the present convention, unless, after having been notified by the commanding officer of the blockading fleet of the condition of the port, it shall attempt, either by force or by ruse, to enter therein.

(4) That neutral vessels may not be arrested except for just cause and for self-evident acts; that their cases shall be tried without delay; that the procedure shall always be uniform, prompt, and legal; and that in every instance, in addition to the indemnities granted to those who have suffered loss, without having been at fault, complete satisfaction shall be given for the insult to the flag of Their Majesties.

(5) That the declaration of the commanding officer of the vessel or vessels of the Imperial or Royal Navy, which accompanies the convoy of one or more merchant ships, that his convoy carries no contraband goods, must be considered sufficient, and that thereupon there shall be no occasion to visit either his vessel or those of his convoy.

The better to ensure to these principles the respect due to stipulations dictated by a disinterested desire to maintain the inalienable rights of neutral nations, and to give further proof of their devotion to and love of justice, the high contracting Powers hereby bind themselves most solemnly to issue new and strict orders forbidding their captains, whether of ships of the line or of merchant ships, to load, hold, or conceal on board any articles which, by the terms of the present convention, might be considered contraband, and to see, respectively, to the execution of the orders that they shall have published in their admiralties and wherever else it may be necessary, with a view to which the ordinance, which shall renew this prohibition under the severest penalties, shall be printed at the end of the present act, in order that there may be no allegation of ignorance thereof.

ARTICLE 4

In return for this accession His Majesty the Emperor of all the Russias shall see to it that the commerce and navigation of Prussian subjects enjoys the protection of his fleets, by ordering all the commanding officers of his squadrons to protect and to defend from insult and molestation such Prussian merchant ships as happen to be along their course, as those of a Power that is friendly, allied and strictly observant of neutrality; it being understood, however, that the aforesaid ships shall not be employed in any commerce that is illicit or contrary to the rules of the strictest neutrality.

The same protection and the same assistance shall be given to the Prussian flag by Danish and Swedish war-ships, and His Majesty the Emperor of all the Russias binds himself to cooperate, if neces-

sary, in the arrangements to be stipulated to this effect in separated conventions, to be concluded as a consequence of the present act between the Courts of Berlin, of Copenhagen, and of Stockholm.

ARTICLE 5

This convention shall have no retroactive effect, and consequently no action shall be taken with respect to differences which may have arisen before its conclusion, unless it is a question of continuous acts of violence, tending to establish an oppressive system for all the neutral nations of Europe in general.

ARTICLE 6

If, in spite of the most scrupulous care on the part of the two Powers and in spite of the observance of the most complete neutrality by them, merchant ships of His Imperial Majesty of all the Russias or of His Prussian Majesty should be insulted, pillaged, or taken by the war-ships or privateers of any of the Powers at war, then the Minister of the injured party shall make representations to the government whose war-ships or privateers shall have committed such acts, demand the seized ship, and insist upon suitable indemnification, never losing sight of the reparation due for the insult to the flag. The Minister of the other contracting party shall join with him and support his complaints in the most energetic and effectual manner, and they shall thus act in concert and in perfect accord. If justice should be refused on these complaints, or if the rendering of justice should be postponed from time to time, then Their Majesties shall employ reprisals against the Powers so refusing, and they shall take counsel with each other as to the most effectual method of carrying out such reprisals.

ARTICLE 7

If either of the two Powers or both of them, because of or in contempt of the present convention, should be disturbed, molested, or attacked, it is likewise agreed that they shall make common cause for their mutual defense and shall work and act in concert to secure full and complete satisfaction for the insult to their flag and for the losses caused to their subjects.

ARTICLE 8

The principles and the measures adopted by the present act shall be applicable also to all naval wars, which may unfortunately arise to disturb Europe. These stipulations shall therefore be regarded as permanent and shall constitute the rule for the contracting Powers in the matter of commerce and navigation, whenever there shall be occasion to pass upon the rights of neutral nations.

ARTICLE 9

The principal aim and object of this convention being to ensure general freedom of commerce and navigation, His Imperial Majesty of all the Russias and His Prussian Majesty agree and bind themselves in advance to permit other neutral Powers to accede hereto, and that by adopting the principles they shall share the obligations as well as the advantages hereof.

ARTICLE 10

In order that the Powers at war may not allege ignorance of the arrangements concluded between Their said Majesties, they agree to bring to the knowledge of the belligerent parties the measures which they have together adopted, which are all the less hostile because they are not detrimental to any other country, for they tend solely to protect the commerce and navigation of their respective subjects.

ARTICLE 11

The present convention shall be ratified by the two contracting Parties, and ratifications thereof shall be exchanged in good and due form within six weeks, or sooner if possible, from the day on which it is signed.

In faith whereof, we, the undersigned, by virtue of our full powers, have signed and hereto affixed the seal of our arms.

Done at St. Petersburg, December 6/18, 1800.

[L. S.] COUNT DE ROSTOPSHIN

[L. S.] SPIRIDON COUNT DE LUSI

SUPPLEMENTARY ARTICLE

To prevent the annoyances that may arise as the result of the bad faith of those who make use of the flag of a nation to which they do

not belong; it is agreed to lay down as an inviolable rule that, for a vessel to be considered as the property of the country whose flag it flies, its captains and half of its crew must belong to that country, and it must have on board papers and passports in good and due form; but any vessel that shall not observe this rule and that shall contravene the published ordinances to this effect, printed at the end of the present convention, shall lose all right to the protection of the contracting Powers, and the government to which it belongs shall bear alone the losses, damages, and annoyances that may result therefrom.

Swedish Maritime Regulations, December 23, 1800¹

The preamble states the necessity of rendering the rights of commerce clear and explicit. For this effect, in order to secure the protection of the Government, the commerce of Sweden must observe the following requisites:

1. In order that a ship be entitled to be considered as a Swede, she must be built in Sweden, or the provinces under her dominion; or shipwrecked on the Swedish coast, and there sold; or bought in a foreign country by a legal and authentic contract. If such purchase is made in a country threatened with war, it shall be considered as lawful as soon as three months have elapsed before its actually breaking out. Every ship purchased must be naturalized. As however the naturalization of ships bought in a foreign country, and afterwards taken by a cruiser belonging to any of the belligerent Powers, may frequently produce disagreeable explanations in the sequel, it is hereby declared, that in time of war ships shall not be allowed to be naturalized which have formerly been the property of the belligerents or their subjects; nevertheless, with the exception of all ships that were naturalized before the present regulation was adopted, which shall enjoy all the rights which are connected with the character of neutrals and Swedes.

2. The captain of the ship must be provided with all papers requisite and proper for the security of his voyage. Of this kind are (in

¹*Collection of State Papers*, vol. 11, p. 206.

case the ship goes through the Sound), a certificate of the place where the vessel was built, an invoice, letters showing the cargo not contraband, Turkish and Latin passports, a certificate by the magistrate of the place, a pass for the crew, a copy of the oath of the owner; a charter-party with the subscription of the freighter, the captain, and the person freighting the vessel; a manifest with the like subscriptions, containing a list of the different articles of the lading, and the conditions of the intended voyage; and a bill of health when the same is necessary. If the voyage is merely to the ports of the Baltic or the Sound, the Turkish and Latin passes are not necessary: but the captains must have all the other papers enumerated, without exception.

3. All these documents must be made out and delivered in a Swedish port, unless when a ship has lost her papers by accident, or where they have been forcibly taken away, in which case these documents may be renewed in a foreign port, if the captain, immediately on his arrival, takes the precaution to exhibit an authentic and properly certified declaration, by which the accident is proved, or the ground stated on which he desires the renewal.

4. The captain is prohibited to have false acts or certificates, or duplicates thereof. He is likewise prohibited to make use of a foreign flag.

5. It is required that the captain and half of the crew shall be Swedish subjects.

6. Captains going to the main ocean shall be bound to follow the course pointed out in their instructions, and agreeable to the contents of their certification.

7. Ships destined for the ports of a belligerent Power must, with the utmost care, and under the severest penalties, avoid carrying any contraband commodities. To prevent all doubt or misunderstanding respecting what is contraband, it is agreed that the following goods shall be considered contraband.

8. All Swedish subjects are prohibited to fit out privateers against the belligerents, their subjects and property.

9. A Swedish ship can not be employed by a belligerent Power to transport troops, arms, or any warlike implements. Should any captain be compelled to do so by superior force, he is bound at least to exhibit a formal protest against such violence.

10. When a merchant ship is not under convoy, and happens to be brought to by a ship of war or privateer belonging to any of the bel-

ligerents, the captain shall not, in that case, oppose the searching of his vessel, but be bound faithfully to show all acts and documents which relate to her cargo. The captain and his people are strictly prohibited to keep back or destroy any of their papers.

11. If, however, such ship makes part of a convoy, the foregoing article shall not serve as the rule; but the captain's duty consists in punctually obeying the signals of the commodore of the convoy, for which purpose therefore he shall separate as little as possible from the convoy.

12. All captains are expressly forbidden to attempt going into a blockaded port, as soon as they are formally apprized by the officer commanding the blockade. In order to ascertain what a blockaded harbor is, this appellation is confined to those to which, by the exertions of the blockading Power with ships destined and adequate to the object, it is evidently dangerous to attempt running in.

13. In case a Swedish merchant ship is captured by a ship of war or privateer of any of the belligerents, the captain shall immediately transmit a circumstantial account, and duly explained, to the Swedish consul or vice consul of the place to which the ship is taken; and should there be no consul or vice consul there, he shall transmit a memorial to the Swedish consul of the district to which the place into which his ship is taken belongs.

14. Every captain of a Swedish merchantman, who strictly observes the above regulations and orders, shall enjoy a free voyage, protected by the laws of nations and the provision of treaties; and to this end all public agents and Swedish consuls are required, in case of attack or insult, to give their support to the just and well-founded complaints on the subject. But those who, in any point whatever, neglect or violate their orders, must answer for the consequences of their conduct, without relying upon the protection of His Majesty.

15. By the contents of a recent order, His Majesty has prohibited the privateers of a foreign nation to enter or bring their prizes into the ports of his kingdom, except in case of their being driven in by stress of weather. In this case it is expressly prohibited to all whatsoever to buy the prizes, or any of the effects which the privateers have taken.

To which end publication, etc.

Given at St. Petersburg, 23d December, 1800.

(Signed) GUSTAVUS ADOLPHUS

**Note of Mr Drummond to the Danish Minister for Foreign Affairs
regarding the Armed Neutrality League, December 27, 1800¹**

The Court of London, informed that Denmark is carrying on with activity negotiations very hostile to the interests of the British Empire, thinks that it can not better fulfil the duties which such a circumstance prescribes, than by addressing itself directly to the Minister of His Danish Majesty, to demand from him a frank and satisfactory explanation.

In all the Courts of Europe they speak openly of a confederacy between Denmark and some other Powers, to oppose by force the exercise of those principles of maritime law on which the naval power of the British Empire in a great measure rests, and which in all wars have been followed by the maritime States, and acknowledged by their tribunals.

His Britannic Majesty, relying with confidence upon the loyalty of His Danish Majesty, and upon the faith of the engagements recently contracted between the two Courts, has not demanded from him any explanation on this head. It was his wish to wait for the moment when the Court of Denmark should think it its duty to contradict those reports, so injurious to its good faith, and so little compatible with the maintenance of the good understanding which had been re-established between the two countries.

At present the conduct and the public declaration of one of the Powers, which it is pretended have entered into this confederacy, do not permit His Majesty to preserve any longer towards the rest the same silence which he has hitherto observed.

The undersigned therefore finds himself bound to demand from his Excellency Count de Bernstorff, a plain, open, and satisfactory answer on the nature, object, and extent of the obligations which His Danish Majesty may have contracted, or the negotiations which he is carrying on with respect to a matter which so nearly concerns the dignity of His Britannic Majesty, and the interests of his people.

His Britannic Majesty, always ready to return all the marks of friendship which he may receive on the part of His Danish Majesty, hopes to find, in the answer of the Court of Copenhagen to this request, only a new occasion of manifesting these dispositions.

¹*Collection of State Papers*, vol. 11, p. 210.

In transmitting this note to M. the Secretary of State, the undersigned avails himself, with pleasure, of this opportunity to assure him of the high consideration with which he has the honor to be,

His very humble and obedient servant,

W. DRUMMOND

To his Excellency the COUNT DE BERNSTORFF,
Secretary of State of His Danish Majesty, etc., etc.

Reply of the Spanish Ambassador at the Court of Stockholm to the Swedish High Chancellor respecting the British Violation of the Swedish Flag.¹

STOCKHOLM, *December 29, 1800.*

SIR: I this moment received from my Court an answer to the dispatches, in which I communicated the first steps which I had taken with His Swedish Majesty, when I had the honor to present my first note on the subject of the outrage of which the English were guilty in the road of Barcelona.

The King, my master, has observed with regret the coldness with which the Swedish Court has received the complaint, while it has confined itself to feeble and indecisive measures, from which it does not even indulge the hope of any advantage. This view of the matter shows the small interest with which Sweden is prepared to act in the business. I can not conceal from you, sir, that this inactivity, which is observed in the applications of the Court of Sweden to that of London, might afford room to believe that this negotiation will be connected with other objects of private interest which demand temporizing measures, incompatible with that energy and zeal which His Catholic Majesty expected to see displayed by His Swedish Majesty, in regard to an affair which, as it involves the honor of his flag, would have afforded him an occasion to prove to Europe the warm part he takes in the interest of the maritime Powers, as well as to testify the value he puts upon the good understanding which hitherto has pre-

¹*Collection of State Papers*, vol. 11, p. 209.

vailed between the two Courts. In pursuance of a new order from my Court, I repeat, and formally insist upon what I demanded in my last note of the 17th October. I fondly flatter myself that His Swedish Majesty will adopt far more active measures than the contents of your note allowed me to hope. It is not probable that you will expose Swedish ships to all the severity of the measures which circumstances require to be exercised against suspected vessels, and whose conduct might be considered as connived at, unless the Swedish Court receives from England the most ample reparation respecting the affair of Barcelona.

I have the honor to be, etc.

(Signed) THE CHEVALIER DE HUERTA

Reply of the Danish Minister for Foreign Affairs to Mr. Drummond, December 31, 1800¹

The undersigned Secretary of State for Foreign Affairs, having given an account to the King his master of the contents of the note which Mr Drummond has done him the honor to transmit to him on the 27th instant, is authorized to return the answer which follows:

The Court of London must have received very incorrect information, to have been able for a moment to presume that Denmark had conceived projects hostile against it, or incompatible with the maintenance of the good understanding which subsists between the two Crowns; and the King is very much obliged to His Britannic Majesty, **for having** furnished him with the opportunity of contradicting, in the most positive manner, reports as ill founded, as contrary to his most decided sentiments.

The negotiation which is carrying on at St. Petersburg, between Russia, Prussia, Sweden, and Denmark, has no other object than the renewal of the engagements which, in the years 1780 and 1781, were contracted by the same Powers for the safety of their navigation, and of which a communication was at that time made to all the Courts of Europe.

¹*Collection of State Papers*, vol. 11, p. 211.

His Majesty the Emperor of Russia, having proposed to the Powers of the north to reestablish these engagements in their original form, Denmark has so much the less hesitated to consent to it, as, far from having ever abandoned the principles professed in 1780, she has thought it her duty to maintain them, and claim them upon all occasions, and not allow herself to admit in respect of them any other modifications than those which result from her treaties with the belligerent Powers.

Very far from wishing to interrupt those Powers in the exercise of rights which the war gives them, Denmark introduces into the negotiation with her allies none but views absolutely defensive, pacific, and incapable of giving offense or provocation to any one. The engagements she will make will be founded upon the strictest fulfilment of the duties of neutrality, and of the obligations which her treaties impose upon her; and if she wishes to shelter her innocent navigation from the manifest abuses and violence which the maritime war produces but too easily, she thinks she pays respect to the belligerent Powers by supposing, that, far from wishing to authorize or tolerate those abuses, they would, on their side, adopt measures best calculated to prevent or repress them.

Denmark has not made a mystery to any one of the object of her negotiation, upon the nature of which some suspicion has been infused into the Court of London; but she has not thought that she departed from the usual forms, in wishing to wait the definitive result of it, in order to communicate an official account of it to the Powers at war.

The undersigned, not knowing that any of the Powers engaged in this negotiation has made a declaration, or adopted measures relative to its object, at which Great Britain might take offense or umbrage, can not without ulterior explanation reply to this point of Mr. Drummond's note.

Much less does he conceive in what respect the engagement taken by the previous convention of the 29th of August last can be considered as contrary to those which Denmark is about to enter into with the neutral and united Powers of the north; and in all cases in which he shall find himself called upon to combat or remove the doubts that shall have been conceived with respect to the good faith of the King, he shall consider his talk to be very easy, as long as this good faith shall be introduced into the reproaches or suspicions advanced against His Majesty. He flatters himself that the English Government, after

having received the required explanations, will have the frankness to allow that the provisional and momentary abandonment, not of a principle, the question with respect to which remained undecided, but of a measure, whose right has never been, nor ever can be, contested, can not be found at all in opposition to the general and permanent principles, relative to which the Powers of the north are upon the point of establishing a cooperation, which, so far from being calculated to compromise their neutrality, is destined only to strengthen it.

The undersigned would fain believe that these explanations will appear satisfactory to the Court of London; and that the latter will do justice to the intentions and sentiments of the King, and particularly to His Majesty's invariable desire to maintain and cement, by all means in his power, the friendship and good understanding which subsists between Denmark and Great Britain.

He has the honor to offer to Mr. Drummond the assurance of his most distinguished consideration.

(Signed) BERNSTORFF

COPENHAGEN, *December 31, 1800.*

Reply of Count Wedel-Jarlsberg to Lord Grenville, January 10, 1800¹

The undersigned, Envoy Extraordinary from His Danish Majesty, will transmit this day with regret to his Court the official communication he had the honor to receive yesterday from Lord Grenville, upon the subject of the embargo laid upon the Danish vessels in the British ports.

While he waits until the orders of the King his master, relative to this offensive measure, arrive, we can not avoid protesting against the validity of the motives alleged in the said note, and against the justice of the consequences, which the British Government has conceived it could accredit against the Court of Copenhagen.

A difference which arose between the Courts of Petersburg and London during the negotiation, destined solely to the protection of a

¹Collection of State Papers, vol. 11, p. 220.

perfect neutrality in the north, has no relation whatever with that; and as His Imperial Majesty of all the Russias has caused to be published a formal declaration on the subject of the motives of the measures adopted on his part, Denmark finds in it a complete refutation of the argument advanced by the British Minister.

With respect to the principles of the northern Powers respecting the sacred rights of neutrality, they have not been abandoned. Russia, in her belligerent quality, has only suspended the application, and Denmark and Sweden have, by their convention of the 27th March 1794 (officially communicated to all the belligerent Powers), declared, in the face of all Europe, that their system of protection in favor of innocent commerce was invariable.

Hence it follows that his Danish Majesty only now renews ties which have not ceased to exist. The undersigned thinks himself, in consequence, authorized to protest, formally, against proceedings of so hostile a nature, which the King his master could not but have considered as an open and premeditated provocation, had not the communication been accompanied with the assurance that His Britannic Majesty still desires to maintain good harmony with Denmark; a desire which His Danish Majesty has constantly professed, and of which he has given the most unequivocal proofs.

The undersigned, who for a number of years has felicitated himself upon being the interpreter of the unalterable sentiments of the King his master, is deeply hurt that false impressions have just menaced the good understanding between the two Crowns. He wishes that he could still be the instrument of an explanation calculated to do away injurious doubts, and to prevent incalculable consequences to the interests of the reciprocal powers.

It is with these sentiments, and with those of perfect consideration, that he has the honor to renew to his Excellency Lord Grenville the homage of his respect.

(Signed) WEDEL-JARLSBERG

January 10, 1801.

British Instructions to Lieutenant General Trigge regarding His Majesty's Forces in the Leeward Islands, January 14, 1801¹

SIR: Information having reached this country which leaves no doubt, that the Courts of Copenhagen, Stockholm and Petersburg have agreed to revive the principles of the armed neutrality of the year 1780 and that extensive armaments are now preparing in the ports of the above-mentioned Powers, with the intention of supporting these principles and consequently of resisting by open violence the maritime rights of this country, as established by the law of nations, by the positive stipulations of treaties and by the usage of former wars, His Majesty has resolved to adopt such measures as a conduct so hostile to the just and ancient privileges of the British flag, calls for on his part, for the maintenance and preservation of the best interests of his people; and to employ every possible means, as well to obtain indemnity and reparation for the injury done to the property of His Majesty's subjects, in violation of the most solemn treaties, by the Power which has taken the lead in this confederacy, as to deprive the Courts of Denmark and Sweden (whose conduct has obliged him reluctantly to the resources they may expect to derive from their colonies and trade for entering upon, or carrying on a contest, which as soon as the season will admit of naval operations in the Baltic, it will not be in His Majesty's power to avoid, unless they shall in the interval be induced by this timely act of vigor and justifiable precaution to relinquish the system, to which they are actually engaged, and to give His Majesty such security as the case may appear to require, against the renewal of similar pretensions on their part.

In pursuance of this principle I am commanded to signify to you His Majesty's pleasure that immediately on the receipt of these instructions you are, in concert with the officer commanding His Majesty's naval forces on the Leeward Island station to make every necessary preparation for proceeding in His Majesty's name to seize upon and take possession of the Islands of St. Thomas, St. Croix and St. John and the Swedish island of St. Bartholomeus, together with all ships, stores, or public property of any description, belonging to Russia, Denmark or Sweden, which may be found in the said Islands.

* * * * *

¹Thorvald Boye, *op. cit.*, p. 357.

**Additional Instructions to Lieutenant General Trigge, January 14,
1801¹**

SIR: In addition to the instructions contained in my letter of this day's date I have to inform you that His Majesty from his anxiety to avoid coming to open war with Denmark and Sweden is still willing to entertain a hope, that the display of the vigorous and decided measures he is compelled to adopt against their trade and colonies may still induce them to relinquish their present engagements with Russia and to give such security as His Majesty may deem necessary for their observance of a system of neutrality consistent with the maritime rights of this country. Under these circumstances and until the effect upon the Courts of Copenhagen and Stockholm of the measures His Majesty has ordered to be taken, can be ascertained, whatever appearance of existing hostility these measures may assume, His Majesty is disposed to consider them rather as steps of just and necessary precaution, and with a view to indemnify his own subjects for the injury they have sustained by the confederacy to which these powers are a party, than as arising out of an actual state of war.

This being the case you are not to consider any property or other articles liable to seizure, and which in such cases have usually fallen to the share of the captors as required to them for their advantage His Majesty reserving to himself to determine hereafter respecting the disposal of such property and to what amount an appropriation may be proper for the reward of the captors, and with this view you will cause all articles and effects coming under this description to be deposited in proper places of safety until His Majesty's pleasure shall be known or to be sent to this country on board the ships in which they may be seized as the nature of the cargo or stores may appear to require.

(P. R. O.)

¹Thorvald Boye, *op. cit.*, p. 358.

British Order of Council laying an Embargo on Russian, Danish, and Swedish Ships, January 14, 1801¹

At the Court of St. James's, the 14th January 1801; present, the King's Most Excellent Majesty in Council.

Whereas, His Majesty has received advice, that a large number of vessels belonging to His Majesty's subjects have been and are detained in the ports of Russia, and that the British sailors navigating the same, have been and now are detained, as prisoners, in different parts of Russia; and also, that, during the continuance of these proceedings, a confederacy of a hostile nature, against the just rights and interest of His Majesty, and his dominions, has been entered into with the Court of St. Petersburg by the Courts of Denmark and Sweden, respectively; His Majesty, with the advice of his Privy Council, is thereupon pleased to order, as it is hereby ordered, that no ships or vessels belonging to any of His Majesty's subjects be permitted to enter and clear out for any of the ports of Russia, Denmark, or Sweden, until further order; and His Majesty is further pleased to order, that a general embargo or stop be made for all Russian, Danish, and Swedish ships and vessels whatsoever now within, or which hereafter shall come into any of the ports, harbors, or roads within the United Kingdom of Great Britain and Ireland, together with all persons and effects on board the said ships and vessels; but that the utmost care be taken for the preservation of all and every part of the cargoes on board any of the said ships or vessels, so that no damage or embezzlement whatever be sustained.

And the Right Hon. the Lords Commissioners of His Majesty's Treasury, and the Lords Commissioners of the Admiralty, and the Lord Warden of the Cinque Ports, are to give the necessary directions herein as to them may respectively appertain.

W. FAWKENER

Notification of Lord Grenville to the Danish and Swedish Ambassadors regarding an Embargo on Danish and Swedish Ships, January 15, 1801²

The undersigned, principal Secretary of State for Foreign Affairs, has been commanded by His Majesty to make the following communi-

¹*Collection of State Papers*, vol. 11, p. 217.

²*Collection of State Papers*, vol. 11, p. 218.

cation to Count von Wedel-Jarlsberg, and Baron von Ehrensward, Danish and Swedish Envoys at this Court.

His Majesty has heard with the sincerest concern, that at the moment when the Court of Petersburg had adopted the most hostile measures against the persons and property of His Majesty's subjects, the two Courts of Copenhagen and Stockholm had concluded a convention with that Power for the maintenance of a naval armed confederacy in the north of Europe. If the circumstances under which the convention alluded to was negotiated and concluded, could have left any doubt in His Majesty's mind respecting the objects to which it is directed, that doubt would, by the declarations of the Court of Petersburg, and still farther by the recent and official declarations of the Court of Copenhagen, have been completely removed. It is sufficiently known with what hostile intentions an attempt was made, in the year 1780, to introduce a new code of public law against Great Britain, and to support by force a system of innovation prejudicial to the dearest rights of the British Empire. But His Majesty has hitherto had the satisfaction to see that those arbitrary and injurious measures have been completely given up. At the beginning of the present war, the Court of Petersburg, which had taken a most active part in the establishment of the former alliance, entered into articles with His Majesty, which are not merely incompatible with the convention of 1780, but which are directly in the face of it; engagements which are still in force, and the reciprocal execution of which His Majesty is entitled to demand upon every principle of good faith, during the continuance of the war. The conduct of His Majesty towards the other Powers of the Baltic, and all the decisions of his courts of justice in regard to prizes, have been uniformly, and notoriously, founded upon those principles which previously to the year 1780 had guided all other European courts of admiralty. Nor had the intention to renew the former confederacy been communicated to His Majesty on the part of any of the contracting Powers, till he received information of the actual signing of the convention, and had been apprized by the declaration of one of the parties, that the object of it was to confirm the stipulations entered into in the year 1780 and 1781, in their original shape. No further doubts therefore can remain, that the object of their confederacy, and the naval preparations, which the contracting parties pursue with vigor, is nothing less than to place themselves in a situation to maintain by force, pretensions which are

so obviously inconsistent with the principles of justice, that those Powers, which, when neutral, brought them forward, were the first to oppose them when they became belligerent, and the establishment of which, if it should be effected, would be one of the principal means of overthrowing the strength and security of the British Empire. On the knowledge of these circumstances, His Majesty the King would act contrary to the interest of his people, the dignity of his crown, and the honor of his flag (which by the discipline, courage, and skill of his navy, has risen to so extraordinary a pitch of greatness), were he to delay the adoption of the most effectual measures to repel the attack he has already experienced, and to oppose the hostile effects of the confederacy armed against him. His Majesty has therefore authorized the undersigned officially to communicate to Count Wedel-Jarlsberg and Baron von Ehrensward, that an embargo has been laid upon all the Danish and Swedish ships in the ports belonging to His Majesty. But in the execution of this measure His Majesty will take care that no violent or severe proceedings shall be exercised on the part of His Majesty towards innocent individuals. His Majesty is still animated by the most anxious desire that the circumstances which have rendered these steps necessary may cease, and that he may be enabled to return to those relations with the Courts of Stockholm and Copenhagen, which existed between them, till that mutual good-understanding was interrupted by the present attempts to renew former pretensions.

(Signed) GRENVILLE

Reply of Baron Ehrensward, January 17, 1801, to the Notification of Lord Grenville regarding an Embargo on Danish and Swedish Ships.¹

The undersigned, Minister Plenipotentiary of His Imperial Swedish Majesty, received the official notification, by which his Excellency Lord Grenville, first Minister of State, signified to the undersigned, that His

¹*Collection of State Papers*, vol. 11, p. 221.

Britannic Majesty had ordered an embargo to be laid on all the Swedish ships that should be found in the harbors within his dominions. So unexpected an event between Powers who were in relations of friendship towards each other, was received with astonishment by His Imperial Majesty, who was not only unconscious of having given His Britannic Majesty the least cause of complaint, but on the contrary was entitled to have demanded indemnification for repeated aggressions. Actuated by this reflection, he rather expected that the notification was transmitted with the view to bury his grievances in oblivion, than to give occasion for fresh ones, which should renew the remembrance of the past.

As the English Court has stated, as the ground of this notification, that a maritime convention was in contemplation, it would doubtless have acted with more justice, had it waited for an official communication from the Swedish Court, which it most assuredly would in proper time have received, of a convention, which is considered in so odious a point of view, as to urge it to an act of violence against a Court, whose connection with England nothing else could have disturbed. As the dispute between the Russian and English Courts related to the island of Malta, and the declaration of the Danish Court referred to the convention of 1780, the undersigned can see no just reason why the Swedish Court, which had given no cause of complaint to the English, and from which no other declaration was required than what related to the note of the 31st of December, which has just been received, should be attacked in so hostile a manner before any answer had been given to the insinuations contained in that note.

The undersigned, who imparted the contents of the note of his Excellency Lord Grenville to his Court, is obliged, in conformity to the orders of his master, to protest, as far as by the present act he can formally protest, against the embargo laid on the Swedish ships, and all loss or damage that may be thereby occasioned. He demands, in the most forcible and expressive terms, that, in pursuance of the stipulations of the treaty of 1661, the embargo may be taken off, the continuance of which can no otherwise be considered than as a designed and premeditated declaration of war on the part of England, as well by the detention of the convoy, as in respect to the affair at Barcelona. The undersigned, whom the expression of the desire of the British Court could not escape, observes, in the hostile determination by which it is accompanied, only to give His Imperial Swedish Majesty cause

of complaint, as well by the detention of the convoy, as in respect to the affair at Barcelona. He wishes the British Court had conformed to the truth of its assurances by its actions, in which case this Court would have been actuated by corresponding sentiments.¹

The undersigned has the honor, etc.

(Signed) BARON VON EHRENSWARD

LONDON, *January 17, 1801.*

Note of Lord Carysfort to Count Haugwitz regarding the Armed Neutrality League, January 27, 1801²

As the undersigned Ambassador Extraordinary and Minister Plenipotentiary has been directed by his Court to communicate to the Prussian Ministry His Majesty's note, which, by command of His Majesty the King of Great Britain and Ireland, was presented to the Ministers of Denmark and Sweden, he can not discharge this commission without likewise expressing his sincere satisfaction in being authorized to declare how thoroughly His Majesty is convinced that Prussia can never have sanctioned the measures which have given rise to the above-cited note. Those measures openly disclose an intention to prescribe rules to the British Empire, on a subject of the greatest importance; to force those rules upon Great Britain, and for that end, before any of the Powers who have concurred in it have given the smallest intimation to His Majesty, to enter into a league, the object of which is to renew pretensions which Great Britain at every time has considered hostile to its rights and interests, and so declared whenever an opportunity presented—pretensions which the Russian Court has abandoned, not only in fact, but which, by a treaty actually in force, Russia is bound to oppose, and the execution of which treaty His Majesty is entitled to insist upon. When a ship of war belonging to His Danish Majesty resisted by force the execution of a right, which the King of Great Britain and Ireland, by virtue of the clearest and

¹In consequence of the above official intelligence being received at Stockholm, all Swedish ships were immediately stopped from going to England, and an embargo was laid upon all English ships in the Swedish harbors.

²*Collection of State Papers*, vol. 11, p. 213.

most express stipulations of his treaties which the Court of Denmark had demanded, His Majesty, on that occasion, confined himself to the adoption of such measures as the protection of the trade of his subjects required to be given against that measure of hostility, which this conduct on the part of an officer bearing His Danish Majesty's commission, seemed to show. An amicable arrangement put an end to this dispute, and the King flattered himself, not only that all misunderstanding on that subject was removed, but amity between the two Courts was strengthened anew and confirmed. In this situation of affairs His Majesty must have learned with no less astonishment than concern, that the Court of Copenhagen was employed in negotiations to renew the hostile confederacy against Great Britain which took place in 1780, and that also great preparations were going on in the ports of Denmark. Under these circumstances the King must have been compelled to call for explanations from the Court of Denmark. At this moment he received information that a confederacy was signed at Petersburg, and the answer of the Danish Minister left no doubt respecting the nature and object of this convention, as he declared in the most express manner, "That these negotiations had in view the renewal of those relations which had been entered into between the same Powers in the years 1780 and 1781," adding, "that His Majesty the Emperor of Russia had proposed to the northern Powers the renewal of their connection in its original form." The engagements alluded to had for their object principles of maritime law which never had been recognized by the tribunals of Europe, and the contracting parties mutually engaged to maintain them by force, and to compel by force other nations to adopt them. They are still more repugnant to the express stipulations of the treaties which subsist between the Courts of Stockholm and Denmark, and the British Empire. The convention which these engagements were to renew was negotiated at a time when the Court of Petersburg had adopted hostile measures against the persons and property of His Majesty's subjects, and when nothing but the extraordinary moderation of the King could have authorized other Powers not to consider him as at open war with that Court. In such a state of things, nothing certainly could be more inconsistent with the ideas of neutrality, and nothing more distinctly indicate a hostile disposition, than that those engagements were not postponed till it was ascertained whether Russia was not to be considered as a belligerent Power. Such forbearance was the more to be

expected, and particularly from the Court of Copenhagen, as, by an express article of the league of 1780, the Danish ports and havens in Norway were placed at the disposal of Russia for the purpose of facilitating the prosecution of hostilities out of the Baltic. When, therefore, the King was informed by one of the contracting parties that the object of the negotiations which had been begun at Petersburg, without giving the least intimation, and which at last, according to the information received by the King, had terminated in the conclusion of a convention, was no other than to renew the former confederacy to press upon His Majesty a new code of law to which he had already refused his assent; and when moreover he had the most certain intelligence, and could no longer doubt, that the Powers of the Baltic, engaged in this transaction, were pursuing warlike preparations with the utmost activity; when one of those Powers had placed itself in a state of actual hostilities with His Majesty; no other alternative remained, but either to submit, or to adopt measures which were calculated to put an effectual stop to the hostile operation of a league, which, by the declaration of the Danish Court itself, was openly directed against His Majesty. Meanwhile His Majesty has not omitted on this occasion to display his wonted justice and good-will. Although he felt it necessary, for the maintenance of his rights, to secure some pledge against the hostile attacks which were meditated against his rights, yet he has taken the utmost care to guard against loss and injury to individuals. Firmly convinced that his conduct towards neutral States has been conformable to the recognized principles of laws, whose basis and sanction is to be found not in passing interests and momentary convenience, but in the general principle of justice; of laws which have been received and observed by the admiralty courts of all the maritime Powers of Europe; His Majesty does not yet forego the hope that the Courts of Stockholm and Copenhagen will not take upon them the responsibility that will fall upon the authors of the war; that particularly they will not expose themselves to that responsibility for the introduction of innovations, the notorious injustice of which has induced those Powers by which they were first broached, to oppose, when they found themselves at war; innovations besides, which are expressly repugnant to those treaties which have been concluded with His Majesty. The step on which His Majesty has resolved must have long been foreseen. The British Government has never concealed that it considered the league of 1780 as hostile,

and had never ceased that attention with which it watches over the rights of the nation. It immediately resisted the attempt to renew the principles which at the above-mentioned period had been agitated, and the undersigned declared to Count Haugwitz at the first conference he had with him on his arrival at Berlin, "That his Majesty would never submit to pretensions which were irreconcilable to the true principles of public law, and which strike at the foundations of the greatness and maritime power of his kingdoms." Still later, in the beginning of November, the undersigned had the honor to represent to his Excellency, as the Minister of a Power connected with His Majesty by the most intimate friendship, what disagreeable consequences must follow from the attempt of the northern Powers to press forward those pretensions. He has never ceased to renew this declaration, when, by the command of His Majesty, he has been the interpreter of that satisfaction given to the King by the repeated assurances of the friendship of His Majesty the King of Prussia, and of those constant sentiments of perfect justice of which His Majesty has never for a moment entertained a doubt. His Excellency Count Haugwitz will likewise easily recollect the time when the undersigned, ultimately convinced of the friendly intentions of the Prussian Government, communicated to him, by the command of His Britannic Majesty, the King's resolution to allow of no measures which had for their object to introduce innovations in the maritime law now in force, but, on the contrary, to defend that system in every event, and to maintain its entire execution as it had subsisted in all the Courts of Europe prior to the year 1780. If the Court of Denmark had announced in the most unequivocal manner, the real objects and contents of the engagements into which it had entered, the declaration of the Court, that Prussia was one of the Powers concerned in the negotiation, would have been sufficient to satisfy the King, and to prove to him that it could have no hostile views against his Government; and even still His Majesty is convinced that he may implicitly rely on the friendship of His Prussian Majesty. It is true, that, in relation to Great Britain and Ireland, there can be no similarity between the northern Powers and Prussia. Those Powers are connected with His Majesty by the stipulations of mutual treaties, which are less favorable to their interests, and which more or less modify and soften the rigor of the general law; whereas between His Majesty the King of Great Britain and Prussia no treaty of commerce exists, and all intercourse between them is regulated by the

general principles of the law of nations, and established usages. If, however, His Majesty were to consider his own sentiments, and the incessant wish he has shown to preserve the friendship of a monarch with whom he is connected by so many ties, he could not at all anticipate the possibility of a difference which might not easily and speedily be terminated by an amicable discussion. The repeated assurances of such sentiments on the part of His Prussian Majesty, which the undersigned has been empowered to transmit to his court, confirm this agreeable anticipation; and the known principles which have constantly directed His Majesty the King of Prussia, do not tend to countenance the supposition that the latter has entered into the confederacy, or can enter into the confederacy, to support by force principles in common with other Powers, whose hostile views against His Britannic Majesty have been openly proved. Whatever sentiments the Prussian Government may entertain in regard to the new principles themselves, yet it is too just, and knows too well what sovereigns owe to their people, and to one another, to favor for a moment the design to employ force in order to induce His Britannic Majesty to acknowledge a code which the latter deems inconsistent with the honor and security of his Crown.

(Signed) CARYSFORT

BERLIN, *January 27, 1801.*

**British Orders of Council respecting the Embargo on Russian,
Danish, and Swedish Vessels¹**

*At the Court of St. James's, the 28th of January, 1801; present, the
King's Most Excellent Majesty in Council.*

Whereas, His Majesty, by and with the advice of his Privy Council, has been pleased to cause an embargo to be laid upon vessels belonging to the subjects of Russia, Denmark, and Sweden, now within, or which hereafter should come into any of the ports of the United Kingdom of Great Britain and Ireland, together with all persons and effects on board the said vessels: and whereas it has been represented to His

¹*Collection of State Papers*, vol. 11, p. 222.

Majesty, that the goods on board several of the vessels so detained by the embargo are the property of His Majesty's subjects, or the property of persons not being subjects of Russia, Denmark, or Sweden, His Majesty is thereupon pleased, by and with the advice of his Privy Council, to order, as it is hereby ordered, that all goods laden on board Russian, Danish, or Swedish vessels, now detained under the said embargo, and intended to be exported, shall be delivered to the disposal of the owners or their agents, upon affidavit made and produced to the officer in whose custody the said vessels may be, that the said goods were not at the time of shipment, nor are now, the property of the subjects of Russia, Denmark, or Sweden; and also, that all goods which, by virtue of licenses under His Majesty's sign manual, have been imported in vessels belonging to the subjects of Russia, Denmark, or Sweden, shall in like manner be forthwith delivered to the disposal of the owners or their agents, on their making and producing a like affidavit, and on sufficient proof that His Majesty's license to import the said goods had been obtained.

And His Majesty is hereby further pleased to order, that all goods which have been imported into this country, in Russian, Danish, or Swedish vessels, without license under His Majesty's sign manual, and which are now detained by the embargo, shall likewise be delivered to the owners or their agents, on affidavit being made, that such goods were not at the time of shipment, nor are now, the property of subjects of Russia, Denmark, or Sweden; and on their giving sufficient bail to abide adjudication, if any proceedings should be commenced against the said goods within two months from the date of such delivery; but in case no such proceedings should be commenced within two months from the date of such delivery, then the bond so given to be void: and the Right Honorable the Lords Commissioners of His Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Judge of the High Court of Admiralty, are to give the necessary directions herein as to them may respectively appertain.

W. FAWKENER

British Orders of Council respecting Payments to Subjects of Russia, Sweden and Denmark¹

At the Court of St. James's, the 28th of January 1801; present, the King's Most Excellent Majesty in Council.

Whereas His Majesty, by and with the advice of his Privy Council, has been pleased to cause an embargo to be laid upon vessels belonging to the subjects of Russia, Denmark, and Sweden, now within, or which hereafter should come into any of the ports of the United Kingdom of Great Britain and Ireland, together with all persons and effects on board the said vessels; His Majesty, by and with the advice of his Privy Council, is pleased to order, and it is hereby ordered, that no person residing within His Majesty's dominions do presume to pay any money or bills due or payable to, or on behalf of, any person or persons being subjects, or residing within the dominions of the Emperor of Russia, or of the Kings of Denmark or Sweden, or any of them, for the freight of merchandise imported in any Russian, Swedish, or Danish ship, which is detained under the said embargo, or which shall hereafter be brought into any of the ports of His Majesty's dominions, until His Majesty's pleasure shall be further known, or until other provision shall be made by law:—whereof all persons whom it may concern are to take notice, and govern themselves accordingly.

W. FAWKENER

Note of Lord Carysfort to Count Haugwitz, regarding Relations between Great Britain and Russia, February 1, 1801²

The undersigned, Ambassador Extraordinary and Minister Plenipotentiary of His Britannic Majesty, has the honor to address himself to Count Haugwitz, by command of his Court, in order to communicate to him the following particulars:

The spirit of patience and of moderation which prevails in the note of Lord Grenville to Count Kostopshin, will not escape the notice of his Excellency.

¹*Collection of State Papers*, vol. 11, p. 223.

²*Collection of State Papers*, vol. 11, p. 224.

A solemn treaty between the two Powers had given the respective subjects of each a complete security for the prosecution of their trade; and even, in case of a rupture, it had been agreed, that not only no embargo should be laid, but that the subjects on both sides should have a whole year to carry away their effects, and to arrange their affairs in the country.

Notwithstanding these sacred stipulations, the ships of British subjects in the Russian ports are detained, and their property in an extraordinary manner, upon various pretexts, sequestered or sold. Their persons are likewise put under arrest, and a number of British sailors have been forcibly taken out of their ships, and been sent under guard and in the midst of winter into the interior of the country.

In consequence of these new acts of violence, Lord Grenville, Secretary of State for Foreign Affairs, received His Majesty's order to address a second note to Count Kostopshin, in which His Majesty stated his having appointed a commissary to superintend the safety and the wants of his unfortunate subjects; a circumstance which is usual even among the Powers that are actually at war. Lord Grenville in that paper likewise formally insisted on the execution of the treaty of 1793. But, though he made the strong and just remonstrances which such circumstances demanded, yet His Majesty's constant disposition again to restore the former connection and good understanding between the two Crowns has been in vain.

His Britannic Majesty anticipates the sentiments which the King of Prussia will entertain when he is informed of the unheard-of and unjustifiable manner in which His Britannic Majesty's remonstrances were heard by the Court of St Petersburg. The note of Count Kostopshin to Lord Grenville, of the 20th of December, O. S. a copy of which the undersigned is ordered to communicate to Count Haugwitz, will enable His Prussian Majesty to judge whether the undersigned is called upon to make any observations upon it.

The undersigned has received orders to make known to the Court of Berlin, that this conduct, on the part of the Emperor of Russia, has put an end to all correspondence between the Courts of London and St. Petersburg; and the connection between the extraordinary violence committed upon the persons and property of His Majesty's subjects, and with the conclusion of a hostile confederacy, which the Emperor of Russia has formed for the express and avowed purpose of introducing those innovations into the maritime code, which His

Britannic Majesty has ever opposed, has at length produced a state of open war between Great Britain and Ireland and Russia.

It will not be useless to remark, that the Emperor of Russia, at the present crisis, can not be considered as a neutral Power, because he was at war with Great Britain before he himself was at peace with France.

The undersigned shall have done justice to the charge with which he is intrusted, when he declares, in the name of the King his master, that His Majesty, on weighing the present circumstances of Europe, is willing to forbear demanding from the Court of Prussia that succor which was stipulated by treaty, though he considers the *casus foederis* as completely coming within those circumstances in which they stand; and that His Britannic Majesty can not doubt that he will receive from his ally all the proofs of friendship which the events of this new war would have required.

The undersigned has the honor to be, etc.

(Signed) CARYSFORT

BERLIN. *February 1, 1801.*

Swedish Protest of February 7, 1801, on the subject of the alleged Proceeding in the Harbor of Barcelona¹

By this public instrument of protest, be it known and made manifest to all people whom it may concern, that on the seventh day of February one thousand eight hundred and one, before me Thomas Pain, notary public, residing in the town and port of Dover, in the county of Kent, by lawful authority admitted and sworn, personally appeared Martin Rubarth, master of the ketch or vessel called *Hoffnung*, belonging to Barth, in Swedish Pomerania, of the burden of thirty-eight heavy Swedish lasts, or thereabouts, now lying in Dover harbor, and Jacob Christopher Glasen, and Johan Hendrick Heuer, mariners, also belonging to the said vessel, and upon their faith and honesty solemnly de-

¹*Collection of State Papers*, vol. 11, p. 225. This protest relates to the Swedish ship which was alleged, in the correspondence between Spain and Sweden, to have been made use of by the English for the purpose of capturing the two frigates at Barcelona. The master and people made this protest respecting that transaction.

clared, and for truth affirmed and witnessed by the interpretation of Roelof Symons, of Dover aforesaid, gentleman; that the said vessel took in ballast at Oporto, and set sail and departed from thence in good order and condition, staunch and tight, on the 19th day of July last past, with the wind favorable, bound to the Mediterranean in search of freight, and proceeded, with easterly winds and variable weather, without any thing particular occurring, until the 23d day of August following, when they arrived and brought up in the road of Alicant, and were there put under quarantine, and on the 25th in the afternoon released from such restraint, when the said master made inquiries for freight, but none could be obtained, and the wind was at north-east and east-south-east, and they replenished their stock of water and got in readiness to proceed; and on the 28th weighed with a light breeze northerly, and steered for Barcelona; and on the 29th being under Cape Saint Martius, they were boarded by a Spanish privateer, and her crew took from the said vessel some stock fish and vegetables, and then quitted her, and they proceeded, with variable winds and weather, without any thing particular occurring, until the 3d day of September following, when, being between Sitger and the Castle de Fel, two other Spanish privateers rowed from the land towards the said vessel and hailed her, when the said master informed them they came from Alicant, and were destined to Barcelona; and the people on board the said privateer then inquired whether the said appearers had seen any English frigates or other vessels, which being answered in the negative, the said privateers quitted the said vessel, and steered south-west, and it fell calm; and on the 4th, at half past one o'clock in the afternoon, a breeze sprung up at west-south-west by west, the point of Cape de Fel bearing north-west by west, distant about one and a half German miles, and they steered along the land for Barcelona aforesaid, and about five o'clock in the afternoon saw, under the land of Lobregat, a line of battle ship and a frigate with Spanish colors flying, and a boat and crew came from the shore, which the said appearers afterwards found belonging to the said line of battle ship; and the crew speaking the English language, the said appearers found that the colors they had seen flying were false, and that the said ships of war were English; and the crew of the said boat then asked from whence the said vessel came, where bound, and what she was laden with? to which the said master replied, he came from Alicant with ballast, and intended going to Barcelona to procure a freight, and had

brought a cargo of staves from Pillau to Oporto; whereupon the said boat's crew examined the said vessel's papers, and asked the said master if he had letters to any person in Spain, as, if he had, his said vessel would be a good prize; who replied, no such letters were on board; when the said boat and crew quitted the said vessel, and commanded the said master to lay his top-sail back, and keep after the said line of battle ship, and that when they got on board, if a flag of any nation was hoisted, he might proceed on his voyage; but no such flag was hoisted, and the said two ships of war kept in for the land, and fired a shot at the said appearers' vessel, which obliged them to follow; and a boat with two officers and a great number of men came on board, and took the command and possession of the said vessel; when the said master asked what was their intention for so doing? and the said officers replied, that they did not know, but were obliged to follow their commander's orders; and toward evening, when it came on to be dark, they kept out to sea with the top-sail constantly laid back, and then many boats (to the best of the said appearers' recollection eight in number) came alongside, filled with armed officers and men, and they got on board the said vessel, at which the said appearers were greatly alarmed; and the said master asked the officer who commanded the man at the helm, what was intended to be done with the said vessel and her crew? who informed him, that the captain was on board, and that the said master might go forward and inquire of him, which he accordingly did; and he commanded him to be silent, and spoke to another officer, who put a pistol to the said master's breast, and informed him, if he uttered a word to any man, a shot should end his existence; and they steering the said vessel for Barcelona Road, the said master begged he might be allowed to get her anchors ready, which was permitted; and while the same was doing, one of the crew spoke a few words, when an officer immediately jumped up, and would have killed him, had he not fortunately been prevented by another officer, and between eight and nine o'clock in the evening they arrived in Barcelona Road, and were hailed by a Spanish frigate riding at anchor, when the said master not being permitted to reply, one of the said English officers called out, "Sueco, Sueco," and a firing began from the said Spanish frigate at the said vessel, when the said English officers and people took to their boats and proceeded towards her, and the firing continuing, the said appearers put their helm a-lee, and ran into the cabin to prevent being shot, and soon afterwards the said firing

ceased, when the said master and his crew got on the deck to save the sails, and bring the said vessel up; and as soon as they had let the anchor go, and hauled the foresails down, another firing commenced, by which Hans Peter Rubarth (the then mate of the said vessel, and brother to the said master) was shot through his left shoulder and arm, and fell to all appearance dead; at which the said appearers were much alarmed, and let the said vessel drive with the little cable she had out, and hastened to assist him into the cabin; and the said appearers discovered, that the said English officers and men captured in their said boats two Spanish frigates, in which they passed the said vessel, and the wind got more off the shore, and the firing continued, and the shots went over her abaft, and she drove into deep water; and, to prevent drifting out to sea, they let go both anchors, and made the sails fast, and, when the said two Spanish frigates had got out a considerable distance to sea, some Spanish gun-boats came near, whereupon the said appearers were much alarmed, apprehending they would still consider the said vessel an enemy, and sink her, and therefore hoisted a light as a signal that they were friends; and the people on board the said gun-boats inquired if they had any Englishmen left, when the said master informed them there were not, but that his mate was severely wounded; when one of the said gun-boats came alongside, and her crew inquired if any other person was sick; and being answered that all the others were in perfect health, an officer came on board, who seeing the said master weeping over his wounded brother, promised to acquaint Mr. Almgren, the Swedish consul at Barcelona aforesaid, of his distress, and to send people on board, to assist in weighing the anchors, and conduct the said vessel into the harbor of Barcelona aforesaid to obtain a surgeon; that on the 5th one came on board with four men, and she was towed into the said harbor, and moored in a proper place to perform quarantine, and continued under such restraint ten days, and was then released, and during the same the said master was obliged to keep the said four men, and also the surgeon and two other men, to watch the said mate; and the rigging, sails, and yawl, which were shot and much damaged, they repaired and stoppered as well as they could, and as soon as *prattic* was obtained, the said mate was taken on shore to the hospital at Barcelona aforesaid; and the said master having obtained freight on the 9th day of October last, sailed from Barcelona aforesaid, but the said mate continued so ill, he was obliged to be left in the said hospital. That in the

latter part of the month of December following, the said master received a letter, dated the 14th day of the said month, from Daniel Christopher Hingst, of Barth aforesaid, the owner of the said vessel stating that the said mate died of his wounds in the hospital of Barcelona aforesaid, on the 29th day of the said month of October, leaving a widow and three infant children. And also the said appearers declared, that they have been informed, and verily believe, that the said line of battle-ship is called the *Minotaur*, Capt. T. Lewis, but they have not been enabled to learn the name of the said English frigate, or of her commander, and that they used their utmost endeavors for the preservation of the said vessel; that whatever damage or loss the same sustained was not occasioned by or through any neglect or default of them, or any of the then crew, or by reason of any defect or fault in the said vessel or her tackling, but merely by means of the said capture. Therefore the said master has desired a protest; wherefore I, the said notary, at his request, have solemnly protested, and by these presents do protest, against the said Captain T. Lewis, and the other officers and crew of the said ship *Minotaur*, and also the officers and crew of the said English frigate, and every other person and cause occasioning the said capture and detention, of and for all losses, costs, charges, damages, demurrages, suits, and expenses already and hereafter to be suffered and sustained thereby, to be allowed and recovered in time and place convenient. Thus done and protested in Dover aforesaid, in the presence of James Moon and John Finnings, witnesses thereto, called and requested. In testimony of the truth thereof, the said appearers, interpreter, and witnesses, subscribed their names in the registry of me the said notary; and I the said notary have hereunto set my hand, and affixed my notarial seal. Dated the day and year first above written.

(Signed) THO. PAIN

The said Martin Rubarth, Jacob Christopher Glasen, and Johan Henderick Heuer, were sworn on the Holy Evangelists to the truth of the foregoing protest; the said Roelof Symons being first sworn faithfully to interpret to them, at Dover aforesaid, the said 7th day of February 1801, before me.

(Signed) THO. PAIN

A Master Extraordinary in Chancery

Hoffnung, Martin Rubarth Master. Protest dated February 7th, 1801.

Reply of Count Haugwitz to Lord Carysfort, February 12, 1801¹

The undersigned, State and Cabinet Minister, has laid before His Prussian Majesty the two notes which Lord Carysfort, Envoy Extraordinary and Minister Plenipotentiary from His Majesty the King of Great Britain and Ireland, has done him the honor to transmit to him on the 27th of January, and 1st of February last.

The undersigned having it in commission to return an explicit and circumstantial answer, is under the necessity of informing Lord Carysfort, that His Majesty can not see without the utmost grief and concern, the violent and hasty measures to which the Court of London has proceeded against the northern naval Powers. Error alone can have given occasion to these measures, as the assertions in the note of the 27th sufficiently show. In that it is said, that the maritime alliance "has for its object, to annul the treaties formerly concluded with England, and to prescribe laws to her, with respect to the principles of them; that the neutrality is only a pretext to impose these laws on her by force, and to establish a hostile alliance against her."

Nothing, however, is farther from the above-mentioned negotiation, than the principles here supposed. It is founded in justice and moderation, and the communication of a copy of the convention to such of the belligerent Powers as had the justice and patience to wait for the same, will prove this beyond the possibility of a denial.

When, in the beginning of January the Minister of His Britannic Majesty officially proposed to the undersigned, the question, "whether the northern Courts had actually concluded the confederation which had been reported; and whether Prussia had acceded to it?"—the King conceived that the respect which sovereigns owe to each other, and the liberty possessed by every independent State to consult its own interests, without rendering an account to any other Power, authorized him to withhold any communications relative to himself and his allies; and contented himself with answering, that as he had seen, without interfering, the connections which England had entered into without consulting him, he considered himself entitled to the same confidence; and that if the King of Great Britain thought it his duty to support the rights and interests of his kingdom, His Prussian Majesty considered it as not less his duty to employ every means in the defense of the rights and interests of his subjects.

¹*Collection of State Papers*, vol. 11, p. 229.

This answer might have sufficed a few weeks since; but in the situation in which affairs now are, the King thinks himself called upon to make an explicit declaration to the Court of London, relative to the spirit of the treaty, which has probably been attacked because it was not known, and which is far from having the offensive views of which the contracting Powers have been arbitrarily accused. They have expressly agreed, that their measures shall be neither hostile nor tend to the detriment of any country, but only have for their object the security of the trade and navigation of their subjects. They have been attentive to adapt their new connections to present circumstances. The strict justice of His Majesty the Emperor of Russia has, even in the detail, proposed modifications, which alone might be sufficient to indicate the spirit of the whole. It has since been determined, that the treaty shall not be prejudicial to those which had before been concluded with any of the belligerent Powers. It was also resolved, that this determination should be candidly communicated to those Powers, to prove the purity of the motives and views of the contracting parties. But England would not allow time for this; had she waited this confidential communication, she might have avoided those intemperate measures which threaten to spread the flames of war still wider.

Besides, it only depended on England, previously to draw satisfactory information from the correspondence with Denmark, if, instead of taking hold of two isolated passages, which Lord Carysfort, in his first note, extracted from Count Bernstorff's note of the 31st of December, the Court of London had listened to the solemn declaration which it contained: "That it could never have been supposed for a moment that Denmark had formed hostile projects against England, or plans that could not subsist together with the maintenance of harmony between the two Crowns, and that the Court of Copenhagen congratulated itself on finding an opportunity for contradicting, in the most positive manner, such unfounded reports." This plain and precise declaration agrees with the language which the undersigned had used more than once to Lord Carysfort, when speaking on that subject; and it can scarcely be conceived how the English Court, after that declaration had been received, could conclude from the note of the Minister of Denmark, "That the engagements of the contracting Powers had for their object the introduction of principles of naval rights, which had never been acknowledged by the tribunals of Europe, and which were of a hostile tendency against England." The conclu-

sion is totally false, and, is not authorized even more by the contents of the answer of the Danish Court, than the other unmerited reproach made to it, "of having renewed an alliance of a hostile tendency against England, and of being actively employed in armaments with that view." Never were measures more evidently defensive, than the measures of the Court of Copenhagen, and their spirit will be misconceived still less, when it is considered what menacing demonstration that Court had experienced from the British Government, on occasion of the affair with the *Freya* frigate, before the above measures were resorted to. England's arbitrary conduct on this occasion is naturally explained by the pretensions which it had made for some time past, and which it has repeatedly renewed in the notes of Lord Carysfort, at the expense of every commercial and naval Power. The British Government has, in the present more than in any former war, usurped the sovereignty of the seas; and by arbitrarily framing a naval code, which it would be difficult to unite with the true principles of the law of nations, it exercises, over the other friendly and neutral Powers, an usurped jurisdiction, the legality of which it maintains, and which it considers as an imprescriptible right, sanctioned by all the tribunals of Europe. The sovereigns have never conceded to England the privilege of calling their subjects before its tribunals, and of subjecting them to its laws, in cases where the abuse of power has got the better of equity, and which, alas! are but too frequent. The neutral Powers have always had the precaution of addressing to it the most energetic reclamations and protests, but experience has ever proved their remonstrances fruitless; and it is not surprising, that, after so many repeated acts of oppression, they have resolved to find a remedy against it, and for that purpose to establish a well-arranged convention, which fixes their rights, and which places them on a proper level even with the powers at war.

The naval alliance, in the manner as it has just been consolidated, was intended to lead to this salutary end, and the King hesitates not to declare to His Britannic Majesty, that he has again found in it his own principles, that he is fully convinced of its necessity and utility, and that he has formally acceded to the convention, which has been concluded on the 16th of December, last year, between the Courts of Russia, Denmark, and Sweden. His Majesty is, therefore, among the number of the contracting parties, and has bound himself, in that quality, not only to take a direct share in all the events which interest

the cause of the neutral Powers, but also, in virtue of his engagements, to maintain that connection by such powerful measures as the impulse of circumstances may require. The note of Lord Carysfort mentions a subject, to which His Majesty believes himself neither obliged to answer, nor even to have a right of entertaining an opinion with respect to it. There exist discussions between the Courts of Petersburg and London, which have by no means anything to do with the business which the latter has interwoven with it. But in the same measure in which the conduct of Prussia has hitherto been directed by the most blameless impartiality, the King's conduct will henceforth be directed by his regard for engagements, which in themselves are a proof of it. To stipulations which contain nothing hostile, and which the safety of his subjects required, he owes all the means which Providence has laid in his power. Unpleasant as the extremes may be to which England has proceeded, yet His Majesty doubts not the possibility of a speedy return to conciliating and peaceable dispositions, and he relies on the sentiments of equity which, on former occasions, he has had the advantage of meeting with in His Britannic Majesty.

It is only by revoking, and by entirely taking off the embargo, that affairs can be brought to their former situation: and it is for England to judge whether it ought to come to that resolution, in order to offer means to the neutral Powers for proceeding to those communications which they intended to make.

But while those measures exist, which have been resorted to from hatred against a common principle, and against an alliance which can no longer be shaken, the hostile resolution, which must be the consequence, will be the necessary result of the treaty: and the undersigned is ordered to declare to the Minister of His Britannic Majesty, that the King, while he expresses his concern at events of which he has not been the cause, will secretly fulfil the engagements prescribed to him by treaties. The undersigned, thus executing his orders, has the honor of assuring Lord Carysfort of his high esteem.

(Signed) HAUGWITZ

12th February, 1801.

Russian Proclamation interdicting the Transportation of Merchandise through Prussia, February 12, 1801¹

His Excellency the Civil Governor and Counselor of State, Chevalier von Richter, has received the following communication from the Commercial College of the empire: "That His Imperial Majesty, being convinced by experience, that the productions and merchandise of his empire were exported by Prussia into England, His said Majesty has thought proper to order, that the transportation of these productions and merchandises through Prussia, whether by land or sea, shall be severely prohibited; and that, in order to accomplish this sovereign order, the most severe inspection shall take place, in conformity with the ukase of the 15th of December, 1800. The Commercial College has, in consequence, required all civil governors, first, to communicate through the medium of the magistrates, this order to the body of the merchants; secondly, to order the magistrates to instruct their brokers to insert, as a stipulation in their contract, whether made with foreign or Russian merchants, that the articles bought or sold shall not, under any pretence, be sent into Prussia by any channel. The two parties shall bind themselves to this. The magistrates are also bound to suffer none of the merchandises to pass thither on any pretence; and if any one shall refuse to obey this order, they are to seize the articles, and to send advice thereof forthwith."

In consequence, this order, after being transmitted by his Excellency the Civil Governor in Council, in order to its being correctly executed, is, by these presents, communicated to the knowledge of all the merchants in this city.

Dated RIGA, *February 12, 1801.*

Note of Count Wedel-Jarlsberg to the British Minister regarding the Embargo on Danish Vessels²

LONDON, *February 23, 1801.*

The undersigned, having informed the King his master of the official communication of Lord Grenville, dated the 15th January, last, has

¹*Collection of State Papers*, vol. 11, p. 238.

²*Collection of State Papers*, vol. 11, p. 233.

received orders to declare, that His Majesty is deeply affected at seeing the good understanding which has hitherto subsisted between Denmark and Britain, suddenly interrupted by the adoption of a measure as arbitrary as injurious on the part of Great Britain; and that he is not less afflicted and alarmed at seeing that measure justified by assertions and suppositions as unjust as ill founded. He remarks, with surprise, that, by confounding the cause of the measures taken in Russia against the interests of Great Britain, with the object of the convention relative to neutral navigation, the British Government evidently mixes two affairs which have not the least connection with each other. It is a subject of perfect notoriety, that the incident of the occupation of Malta by the troops of His Britannic Majesty, has alone been the occasion of the embargo on the British ships in the ports of Russia, and that the Ministers of the neutral Courts at Petersburg acted according to their full powers and instructions anterior to that event. The dispute relating to it is absolutely foreign to the Court of Copenhagen. It knows neither its origin nor foundation, or at least but very imperfectly, and its engagements with Petersburg have no relation whatever to it. The nature of these engagements has been solemnly declared to be only defensive; and it is inconceivable how general principles, conformable to every positive obligation, and modified according to the stipulations of treaties, could be justly considered as attacks on the rights or dignity of any State whatever. While the Powers who profess them require only their acknowledgment, the conflict of principles reciprocally maintained, can not be provoked but by those means which, operating as a denial of facts, place them in direct and inevitable opposition. The undersigned, by order of the King his master, calls the serious attention of the British Government to these reflections, and to these just and incontrovertible truths; they are analogous to the loyal sentiments of a sovereign, the ancient and faithful ally of Great Britain, who is not only incapable of offering, on his part, any injuries real or voluntary, but who has well-founded titles to a return of forbearance and justice. The prompt cessation of proceedings hostile to the interests of Denmark, is a circumstance to which His Majesty still looks forward with the confidence he has ever wished to entertain with regard to His Britannic Majesty; and it is in his name, and conformably to the instructions expressed on his part, that the undersigned insists on the embargo placed on the Danish vessels in the ports of Great Britain, being immediately taken off. By a constant series of moderation on

the part of the King, the measures to which the outrageous proceedings of the British Government authorized him to have had recourse, have been suspended, His Majesty deeming it an act of glory to give, by this means, a decisive proof of the falsehood of the suspicions advanced against him, and of the doubts thrown on his intentions. But if, contrary to all expectation, the British Government persists in its violent resolution, he will see himself, with regret, reduced to the urgent necessity of exerting those means which his dignity and the interests of his subjects will imperiously prescribe.

(Signed) WEDEL-JARLSBERG

**Note of Count Wedel-Jarlsberg to the British Minister regarding
the Embargo on Danish Vessels¹**

LONDON, *March 4, 1801.*

The undersigned has constantly reposed an unlimited confidence in the sentiments and moderation of His Britannic Majesty. He has consequently only endeavored, in the preliminary note of Lord Hawkesbury, dated the 25th of last month, in answer to his official note of the 23d, to discover the expression of an assurance of these sentiments which should be transmitted to Copenhagen; and he is persuaded that the effect of them on the part of His Britannic Majesty will be manifested, by calling, in the most efficacious and satisfactory manner, the attention of the Government to the representations of His Danish Majesty, transmitted through the organs and offices of the undersigned. But as the adoption of conciliatory measures is constantly found suspended, and as, on the contrary, those of violence and injustice are daily accumulating, the undersigned can not acquiesce, in silence, in the continuation of this state of things, which only tends to bar the way to amicable explanations, and to compromise the dearest interests of each nation. He hastens, in consequence, to renew with earnestness, the demand made in the name of his Court, that the embargo placed on the Danish vessels should be immediately taken off. And, in ex-

¹*Collection of State Papers*, vol. 11, p. 234.

pectation of a satisfactory answer, he has the honor to assure his Excellency Lord Hawkesbury of his respectful consideration.

(Signed) WEDEL-JARLSBERG

Note of Baron Ehrensward to Lord Hawkesbury regarding the Embargo on Swedish Vessels, March 4, 1801¹

The undersigned, Minister Plenipotentiary of His Swedish Majesty, has the honor to transmit to his Excellency Lord Hawkesbury, first Secretary of State of His Britannic Majesty, a printed copy of the naval convention concluded on the 16th Dec. 1800, between His Swedish Majesty and His Majesty the Emperor of all the Russias, as well as a printed copy of the naval regulations which the King has recently ordered to be drawn up.

The undersigned, who, at the command of his Court, has the honor to make this communication to the Minister of His Britannic Majesty, has it likewise in commission expressly to declare, that Their Majesties, by the said naval convention, have reciprocally determined and settled those rights which, as neutral Powers, they believe themselves entitled to, and by the naval regulations have ascertained those duties, for the performance and observance of which, on the part of their subjects, they, as neutral Powers, make themselves answerable. The object of Their Majesties is to confirm and strengthen their rights of neutrality, and to promote the repose of their respective States, by the naval convention they have entered into; and nothing is farther from their intention than by such a step to provoke hostilities. The respect which is due to the rights of nations and to treaties, the consciousness that their own interests are inseparably united with the interests and the love of justice and peace, are the only motives by which Their Majesties have been actuated: they have, therefore, learnt, with the greatest astonishment, that the first news of the conclusion of this convention in England, has been the occasion of so violent a measure as that of laying an embargo on the Swedish ships.

So far from desiring to introduce any innovations with respect to

¹*Collection of State Papers*, vol. 11, p. 235.

the maritime State of Europe, by the assertion of their rights of neutrality. Their Majesties are sensible that it gives no power whatever where those rights were not acknowledged by former treaties. England has seen those treaties; England has seen those treaties executed; they were officially communicated to her, and she did not protest against them. In like manner it was, with regard to the convention of 1780 and 1781; and the Ministry, who now proceed with so much violence, know that the partial renewal of that convention between Sweden and Denmark in 1794, and the armament that followed, operated, during a period of three years, without ever being considered as grounds for hostilities; yet a similar convention is now deemed an hostile confederacy against England. A line of conduct so contradictory, proceeds not from the circumstance of the principles and claims of neutral rights having been now enforced; but it seems to have its foundation in that maritime system which England has established in the course of the present war. It appears also, that that Government, which Europe, from its pacific sentiments, has so often endeavored to convince of the injustice of its pretensions, has now determined to commence a war for the subjection of the sea, after it has rendered itself so renowned in the war undertaken for the freedom of Europe.

If the British Minister will refer to the conduct of England against Sweden, and the neutral Powers in general, during this war, he will find the real cause why His Swedish Majesty has been induced to believe that the formal alliance of several Powers, acting upon the same principles, would more effectually tend to convince the Court of London of the validity of those principles, than by any one Power renewing those reclamations which have hitherto been made in vain; at the same time His Majesty never supposed that such an alliance would be considered as an act of hostility. The British Minister complains that the Court of London was not before instructed of the intention of the respective Courts to renew the convention of 1780; but in the same note he states, that England had entered into engagements this war with its allies respecting neutrals; thus the avowal of the British Minister is an answer to his own charge.

If His Majesty was not fully convinced of the innocence of his intentions, and if he was desirous of deviating from that line of moderation he has ever observed, he might make an invidious and censurable enumeration of the conduct of England; of the unpunished offenses of the commanders of English ships of war, even in Swedish

harbors; of the inquisitorial examinations which the captains and crews of the ships detained, as well in the West Indies as in England, have been subject; of the detention of the convoy in 1798; of the deceitful chicanery with which the proceedings of the courts of admiralty were accompanied; of the absolute denial of justice in many instances; and lastly, by the insult offered to the Swedish flag at Barcelona. His Swedish Majesty must, doubtless, state among the offenses of which he has cause to complain, that after one of his Ministers had been sent to the British Court, its aggressions, instead of being admitted and remedied, were justified. But he has sought no revenge; His Majesty wishes only to procure that security to his flag to which it is entitled. In consequence of this sentiment, the undersigned is empowered to declare, that the British Court shall acknowledge the rights of Sweden; that it shall do justice with regard to the convoys detained in 1798, as well as respecting the violence offered to the Swedish flag at Barcelona; and above all, that it shall take off the embargo which has been so unjustly laid on the Swedish ships. His Majesty will, with the greatest pleasure, see his ports again opened to the trade of England, and the ancient good understanding between the two Courts renewed. His Majesty, impressed with the dignity due to his empire, has, in consequence of the embargo laid upon the Swedish ships, placed a similar embargo on all English vessels in the harbors of Sweden.

As the pacific tendency of the present convention has been proved to a demonstration, His Majesty therefore hopes that no consideration, respecting any accidental occurrence which may have taken place between the ally of His Majesty the Emperor of Russia and the Court of London, will be introduced. The act of the convention itself proves, that its bases are the rights of neutrality, and that it is in its nature unconnected with every other subject of dispute.

While the undersigned Minister Plenipotentiary of His Swedish Majesty recommends the contents of this present note to the earnest consideration of the Minister of His Britannic Majesty, he has the honor to entreat that his Excellency Lord Hawkesbury will transmit him an answer, which he hopes will speak the sentiments of the King his master.

His Majesty has commanded the undersigned to present this to his Excellency. Should the conciliatory views with which it was dictated prove fruitless, it is His Majesty's opinion, that the presence of the undersigned at the Court of London will no longer be of any advantage.

The undersigned has the honor to assure his Excellency Lord Hawkesbury of his highest esteem.

(Signed) THE BARON VON EHRENSWARD

LONDON, *March 4, 1801.*

Reply of Lord Hawkesbury to Baron Ehrensward, March 7, 1801¹

The undersigned, His Majesty's principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note of Baron Ehrensward, His Swedish Majesty's Minister Plenipotentiary, of the date of the 4th instant; His Majesty has already repeatedly communicated his fixed unalterable determination to maintain those established principles of maritime law which have been found, by the experience of ages, best calculated to afford equal security to the just rights and interests, as well of neutral as of belligerent powers.

The explanations attempted to be given to the present convention, have in no degree weakened the impression which the first perusal of it produced, that the views and motives of the contracting Powers were hostile to His Majesty's dominions; and this impression is most fully confirmed by the consideration, that the northern Courts have recurred to the principles of the convention of 1780 at a moment when the circumstances of the war and the relative state of the navies of the belligerent Powers, convert that which was pretended to be a measure of common equity to all countries, into an instrument of exclusive injury to Great Britain.

Under these circumstances, the embargo on Swedish vessels can be considered in no other view than as an act of just and necessary precaution, which will not be revoked so long as the Court of Stockholm continues to form a part of a confederacy which has for its object to impose by force on His Majesty a new system of maritime law, inconsistent with the dignity and independence of his Crown, and the rights and interests of his people.

The undersigned requests Baron Ehrensward will accept the assurance of his high consideration.

(Signed) HAWKESBURY

DOWNING STREET, *March 7, 1801.*

¹*Collection of State Papers*, vol. 11, p. 238

Manifesto of His Highness Prince Charles, March 28, 1801, regarding the Danish Occupation of the City of Hamburg¹.

By the express command of His Majesty the King of Denmark and Norway, it is hereby declared:

The attacks made by the English Government, in opposition to all the principles of the laws of nations, against the navigation and trade of those Powers that have confederated together for the purpose of securing and maintaining the rights of neutral flags; and the arbitrary and powerful measures adopted by that Government, notwithstanding the most pressing and continued remonstrances; have imposed on these Powers the disagreeable necessity of taking every previous step that may serve to bring the said Government to a more just way of thinking.

As the exclusion of the English navigation and trade from the Elbe, must be an effectual means of promoting this object; and as the possession, for a time, of the Imperial city of Hamburg has been considered as unavoidably necessary for that purpose; His Danish Majesty, unwilling as he is to adopt a measure of this kind, has been obliged to give way to a crowd of imperious circumstances; and consequently has charged me to carry the measure into execution with the troops under my command.

Conformably to the positive orders enjoined me, I will most vigilantly take care, that the strictest discipline shall be observed by the troops that enter the city, while they remain there; and that the tranquillity, the property, and municipal rights of the inhabitants shall not only be undisturbed and unmolested, but that the same shall be most carefully preserved and guarded for them. I expect, therefore, that all persons shall conduct themselves peaceably and friendly towards the royal troops commanded by me; and that nobody shall find fault with that necessary severity which must be put in force in case of a contrary behavior.

CHARLES, PRINCE OF HESSE

PINNEBERG, *March 28, 1801.*

¹*Collection of State Papers*, vol. 11, p. 242.

Proclamation of the Senate of Hamburg regarding the Danish Occupation of the City, March 29, 1801¹

As circumstances of a political nature have created the necessity for the Imperial Danish troops to remain in the neighborhood of this city, and as nothing is to be apprehended on that account, either with respect to the freedom and independence of the State, or the property and safety of the inhabitants; therefore the most illustrious Senate exhort all citizens and inhabitants to confide in their pressing intercessions upon the occasion; and that, with the assistance of the College of Citizens, they will do their utmost for the advantage and safety of the State. And the most illustrious Senate trust that every one will demean himself peaceably and obediently, and especially with decency and propriety towards the foreign military; by which alone the general safety can be ensured, and those inconveniences avoided, to which any inconsiderate and opposite conduct would inevitably subject the city.

Given at our Senate-house, the 29th March 1801.

Danish Ordinance of March 29, 1801, laying an Embargo on English Ships and Goods²

We Christian VII, etc., declare as follows: Whereas all amicable means for taking off the embargo laid on the ships and property of our subjects in English ports, have proved fruitless; we have been obliged to give directions that all ships and goods belonging to the subjects of the British Government, and which are now in our ports, shall be detained and laid under an embargo. All magistrates of towns, and officers of our customs, are directed to assist in carrying this measure into effect.

The same persons are to prepare every thing that is necessary for the preservation of the goods and ships so detained; and every care must be taken of the crews of the ships.

Given under our hand and seal at Copenhagen, on the 29th of March 1801.

CHRISTIAN R.

¹*Collection of State Papers*, vol. 11, p. 242.

²*Collection of State Papers*, vol. 11, p. 243.

Declaration of the King of Prussia, March 30, 1801, to the Royal and Electoral College at Hanover and to the Commanders of the Hanoverian Troops¹

In consequence of the oppressions which neutral navigation and commerce have sustained on the part of the English navy, since the commencement of this war, the different Powers therein interested could no longer abstain, after so many ineffectual complaints, from protecting their violated rights with a greater degree of energy.

The result was the convention formed on the 16th of December, 1800, at St. Petersburg, between Russia, Denmark and Sweden, the just and moderate principles of which had formerly been adopted and followed by the Court of London itself; and His Majesty the King of Prussia, who had likewise felt this violence injurious to his States and his flag, did not hesitate to accede to that treaty.

The contracting Courts were on the point of communicating to the belligerent Powers the convention they had agreed to, and of forming arrangements with them, when England, by an unexpected proceeding, disconcerted this amicable design, by laying an embargo on all the vessels of the naval Powers of the north in her ports, and thus declaring herself their enemy.

It might have been expected that His Majesty the King of Prussia would not regard this conduct with satisfaction or indifference. Accordingly he soon after transmitted to the Court of London the declaration already known, of the 12th of February, formally and publicly avowing his accession to the convention of St. Petersburg, and indicating, at the same time, the means by which the differences that had taken place might be accommodated, and a total rupture avoided.

But, instead of adopting the proposed expedient, England passed over in silence the answer transmitted to Lord Carysfort, at Berlin. She continued to treat the flags of the north in a hostile manner; and in a note transmitted by the Secretary of State, Lord Hawkesbury, to the Swedish Envoy, Baron Ehrenswärd, dated the 7th of March, at London, she has once more manifested those false principles which have been so often refuted:

Under these circumstances, the embargo on Swedish vessels can be considered in no other view than as an act of just and necessary precaution, which will not be revoked, so long as the Court of

¹*Collection of State Papers*, vol. 11, p. 243.

Stockholm continues to form a part of a confederacy, which has for its object, to impose by force on His Majesty a new system of maritime law, inconsistent with the dignity and independence of his Crown, and the rights and interests of his people.

A similar declaration was soon after sent to the Court of Denmark, adding, that she must abandon the coalition of the north, and enter into a separate negotiation with England. After receiving a negative answer, the English Chargé d'Affaires, Drummond, and the Plenipotentiary Extraordinary, Vansittart, left Copenhagen on the same day; and in the mean time the English fleet, under the orders of Admiral Sir Hyde Parker, destined for the Baltic Sea, had actually arrived on the coasts of Zealand.

It appears from all these events, that the Court of London has no inclination to desist from her inadmissible demands, and accept the proposed means of amicable conciliation. His Majesty the King of Prussia therefore feels himself compelled, in conformity to the obligations he has contracted, to take the most efficacious measures in support of the convention attacked, and to retaliate for the hostile proceedings against it: for this purpose, he will not only shut the mouths of the Elbe, and Weser, and the Ems, but likewise take possession of the States belonging to His Majesty the King of England, as Elector of Brunswick Lunenburg, situate in Germany.

His Majesty the King of Prussia accordingly demands and expects from the Electoral College of Privy Councilors at Hanover, and from the Board of Generals, that they will submit to this disposition without delay or reply; and that they will voluntarily obey the orders which shall be given relative to the occupation of the electorate by the Prussian troops, and likewise with respect to the electoral countries. His Majesty principally demands that the Hanoverian corps which has hitherto occupied part of the northern line of demarcation, shall be disarmed and be disbanded, with a proportional part of the other troops. His Majesty requires that the generals and other officers shall engage in writing, not to serve against His Majesty the King of Prussia; but, on the contrary, to follow strictly his orders until the present affair be brought to a conclusion. The troops which shall continue embodied, shall be cantoned, part on the right bank of the Leine, and part on the left bank of the Aller, and behind the Luhe as far as the Elbe, where they shall remain distributed among the towns of Hanover, Gifhorn, Belgen, Lunenburg, and the other smaller towns and villages of that

district. All the other places, including the fortress of Hameln, shall be delivered up to the Prussian troops, under the orders of Lieutenant General Klein.

His Majesty declares, at the same time, that the Prussian troops shall be subsisted at the expense of the electoral territory, commencing from the end of the month of April. His Majesty has sent his Cabinet Minister, Count Schullenburg to notify the present declaration to the Electoral College of Privy Councilors and commanders of troops. In these circumstances, all connection between the Electoral College and His Majesty the King of England will cease; and the authorities are, in consequence, responsible to His Majesty the King of Prussia for their administration and the revenues. In case, as it is to be hoped, of a voluntary submission, His Majesty is disposed, and ready to promise solemnly, as well to the nobility as to the burgesses and to all the inhabitants of the electorate, the complete enjoyment of tranquility, and the security of their property.

But, on the contrary, should the Government and the general officers attempt to impede the execution of the measures taken, and oppose the entrance of the Prussian troops, His Majesty would be obliged, though against his inclination, to revoke his promises, and to treat the electoral States in a hostile manner. The civil and military officers are therefore responsible for the fatal consequences which may in this case result from their conduct. For this reason His Majesty advises them to submit to this summons, and to prevent the rigorous measures which will inevitably be adopted in case of a refusal.

By order of His Majesty.

(Signed) HAUGWITZ

BERLIN, *March 30, 1801.*

Instructions from the British Admiralty to Admiral Dickson,
April 3, 1801¹

Whereas we transmitted to Lord Grenville late one of His Majesty's principal secretaries of state your letter to our secretary dated the

¹Thorvald Boye, *op. cit.*, p. 359.

16 of last month with letter which accompanied it from Captain John Hampstead commander of His Majesty's ship *Squirrel* representing that in pursuance of the orders he had received from you to proceed to the coast of Norway and knowing there were several vessels in the harbor of Oster Risoer he had entered the said harbor and on the next morning had brought away the Swedish vessels named in the margin; and whereas Lord Hawkesbury (who hath succeeded his Lordship) hath by his letter of the 27 instant signified to us His Majesty's pleasure that the four ships and vessels above mentioned belonging to the subjects of His Swedish Majesty should be immediately released and be allowed to return with their masters and crews to the ports from whence they were brought away and to furnish them with the necessary passports for that purpose and also to signify to Captain Hampstead His Majesty's disapprobation of his proceedings on that occasion in the strongest terms.

Given the 3 April, 1801.

W. ELIOT
I. IRONBRIDGE
J. MARKHAM

To

ARCHIBALD DICKSON, ESQ.,
Admiral of the Blue No. Yarmouth.

**Convention of June 17, 1801, between Great Britain and Russia
relative to Neutral Trade and Additional Articles of October
20, 1801¹**

In the Name of the Most Holy and Undivided Trinity:

The mutual desire of His Majesty the King of the United Kingdom of Great Britain and Ireland, and of His Majesty the Emperor of all the Russias, being not only to come to an understanding between themselves with respect to the differences which have lately interrupted the good understanding and friendly relations which subsisted

¹Translation. *British and Foreign State Papers*, vol. 1, pt. 1, p. 405.

between the two States; but also to prevent, by frank and precise explanations upon the navigation of their respective subjects, the renewal of similar altercations and troubles which might be the consequence of them; and the common object of the solicitude of Their said Majesties being to settle, as soon as can be done, an equitable arrangement of those differences, and an invariable determination of their principles upon the rights of neutrality, in their application to their respective monarchies, in order to unite more closely the ties of friendship and good intercourse, of which they acknowledge the utility and the benefits, have named and chosen for their plenipotentiaries, viz.:

His Majesty the King of the United Kingdom of Great Britain and Ireland, Alleyne Lord Baron St. Helens, His said Majesty's Privy Counsellor and his Ambassador Extraordinary and Plenipotentiary to His Majesty the Emperor of all the Russias; and His Majesty the Emperor of all the Russias, Sieur Nikita Count de Panin, his Privy Counsellor, Minister of State for the Department of Foreign Affairs, present Chamberlain, Knight Grand Cross of the Order of St. Alexander Newsky, and of St. Anne of the First Class, of that of St. Ferdinand, and of Merit, of the Red Eagle, and of St. Lazarus; who, after having communicated their respective full powers, and found them in good and due form, have agreed upon the following points and articles:

ARTICLE 1

There shall be hereafter between His Britannic Majesty and His Imperial Majesty of all the Russias, their subjects, the states and countries under their dominion, good and unalterable friendship and understanding, and all the political, commercial, and other relations of common utility between the respective subjects, shall subsist as formerly, without their being disturbed or troubled in any manner whatever.

ARTICLE 2

His Britannic Majesty and the Emperor of all the Russias declare, that they will watch over the most rigorous execution of the prohibitions against the trade of contraband of their subjects with the enemies of either of the two high contracting Parties.

ARTICLE 3

His Britannic Majesty and His Imperial Majesty of all the Russias, having resolved to place under a sufficient safeguard the freedom of commerce and navigation of their subjects, in case one of them shall be at war, whilst the other shall be neuter, have agreed:

1. That the ships of the neutral Power may navigate freely to the ports, and upon the coasts of the nations at war.

2. That the effects embarked on board neutral ships shall be free, with the exception of contraband of war, and of enemy's property; and it is agreed not to comprise under the denomination of the latter, the merchandise of the produce, growth, or manufacture of the countries at war, which should have been acquired by the subjects of the neutral Power, and should be transported for their account, which merchandise can not be excepted in any case from the freedom granted to the flag of the said Power.

3. That in order to avoid all equivocation and misunderstanding of what ought to be considered as contraband of war, His Britannic Majesty and His Imperial Majesty of all the Russias declare, conformably to Article 11 of the treaty of commerce concluded between the two Crowns, on the 10th (21st) February, 1797, that they acknowledge as such the following articles only, viz.: cannons, mortars, fire-arms, pistols, bombs, grenades, balls, bullets, firelocks, flints, matches, gunpowder, saltpetre, sulphur, cuirasses, pikes, swords, sword-belts, knapsacks, saddles and bridles, excepting, however, the quantity of the said articles which may be necessary for the defense of the ship, and those who compose the crew; and all other articles whatever not enumerated here shall not be reputed warlike and naval stores, nor be subject to confiscation, and of course shall pass freely, without being subjected to the smallest difficulty, unless they be considered enemy's property in the sense above specified. It is also agreed, that that which is stipulated in the present article shall not be prejudicial to the particular stipulations of one or the other Crown with other Powers, by which articles of a similar kind should be reserved, prohibited, or permitted.

4. That in order to determine what characterizes a blockaded port, that denomination is given only to a port where there is, by the dispositions of the Power which attacks it with ships, stationary or sufficiently near, an evident danger in entering.

5. That the ships of the neutral power shall not be stopped but upon just causes and evident facts: that they be tried without delay, and that the proceeding be always uniform, prompt, and legal.

In order the better to ensure the respect due to these stipulations, dictated by the sincere desire of conciliating every interest, and to give a new proof of their uprightness and love of justice, the high contracting Parties enter here into the most formal engagement to renew the severest prohibitions to their captains, whether of ships of war or merchantmen, to take, keep or conceal, on board their ships, any of the articles which, in the terms of the present convention, may be reputed contraband, and respectively to take care of the execution of the orders which they shall have published in their admiralties, and wherever it shall be necessary.

ARTICLE 4

The two high contracting Parties, wishing also to prevent all subject of dissension in future, by limiting the right of search of merchant ships going under convoy, to those cases only, in which the belligerent Power might experience a real prejudice by the abuse of the neutral flag, have agreed:

1. That the right of searching merchant ships belonging to the subjects of one of the contracting Powers, and navigating under convoy of a ship of war of the said Power, shall only be exercised by ships of war of the belligerent Party, and shall never extend to letters-of-marque, privateers, or other vessels, which do not belong to the royal or imperial fleet of Their Majesties, but which their subjects shall have fitted out for war.

2. That the proprietors of all merchant ships belonging to the subjects of one of the contracting Sovereigns, which shall be destined to sail under convoy of a ship of war, shall be required, before they receive their sailing orders, to produce to the commander of the convoy, their passports and certificates, or sea letters, in the form annexed to the present treaty.

3. That when such ship of war, having under convoy merchant ships, shall be met with by a ship or ships of war of the other contracting Party, who shall then be in a state of war, in order to avoid all disorder, they shall keep out of cannon shot, unless the state of the sea, or the place of meeting, render a nearer approach necessary; and

the commander of the ship of the belligerent Power shall send a boat on board the convoy, where they shall proceed reciprocally to the verification of the papers and certificates that are to prove on one part, that the ship of war is authorized to take under its escort such or such merchant ships of its nation, laden with such a cargo, and for such a port; on the other part, that the ship of war of the belligerent Party belongs to the royal or imperial fleet of Their Majesties.

4. This verification made, no search shall take place, if the papers are found in form, and if there exists no good motive for suspicion. In the contrary case, the commander of the neutral ship of war (being duly required thereto by the commander of the ship or ships of war of the belligerent Power) is to bring to and detain his convoy during the time necessary for the search of the ships which compose it, and he shall have the faculty of naming and delegating one or more officers to assist at the search of the said ships, which shall be done in his presence, on board each merchant ship, conjointly with one or more officers appointed by the commander of the ship of the belligerent Party.

5. If it happen that the commander of the ship or ships of the Power at war, having examined the papers found on board, and having interrogated the master and crew of the ship, shall see just and sufficient reason to detain the merchant ship in order to proceed to an ulterior search, he shall notify such intention to the commander of the convoy, who shall have the power to order an officer to remain on board the ship thus detained, and to assist at the examination of the cause of her detention. The merchant ship shall be carried immediately to the nearest and most convenient port belonging to the belligerent Power, and the ulterior search shall be carried on with all possible diligence.

ARTICLE 5

It is in like manner agreed, that if any merchant ship thus convoyed should be detained without just and sufficient cause, the commander of the ship or ships of war of the belligerent Power shall not only be bound to make to the owners of the ship and of the cargo, a full and perfect compensation for all the losses, expenses, damages, and costs, occasioned by such a detention, but shall moreover undergo an ulterior punishment for every act of violence, or other fault which he may have committed, according as the nature of the case may require. On

the other hand the convoying ship shall not be permitted, under any pretext whatsoever, to resist by force the detention of the merchant ship or ships by the ship or ships of war of the belligerent Power; an obligation to which the commander of a ship of war with convoy is not bound to observe towards letters of marque and privateers.

ARTICLE 6

The high contracting Parties shall give precise and efficacious orders, that the judgments upon prizes made at sea shall be conformable with the rules of the most exact justice and equity; that they shall be given by judges above suspicion, and who shall not be interested in the affair in question. The government of the respective States shall take care that the said decisions shall be speedily and duly executed, according to the forms prescribed. And in case of an unfounded detention, or other contravention to the regulations stipulated by the present article, the owners of such ship and cargo shall be allowed damages proportioned to the loss occasioned thereby. The rules to observe for these damages, and for the case of unfounded detention, as also the principles to follow for the purpose of accelerating the process, shall be the matter of additional articles, which the contracting Parties agree to settle between them, and which shall have the same force and validity as if they were inserted in the present act. For this effect, Their Britannic and Imperial Majesties mutually engage to put their hand to the salutary work, which may serve for the completion of these stipulations, and to communicate to each other, without delay, the views which may be suggested to them by their equal solicitude to prevent the least grounds for dispute in future.

ARTICLE 7

To obviate all the inconveniences which may arise from the bad faith of those who avail themselves of the flag of a nation without belonging to it, it is agreed to establish for an inviolable rule, that any vessel whatever, in order to be considered as the property of the country, the flag of which it carries, must have on board the captain of the ship, and one-half of the crew of the people of that country, and the papers and passports in due and perfect form; but every vessel which shall not observe this rule, and which shall infringe the ordinances published on that head, shall lose all rights to the protection of the contracting Powers.

ARTICLE 8

The principles and measures adopted by the present act shall be alike applicable to all the maritime wars in which one of the two Powers may be engaged, whilst the other remains neutral. These stipulations shall in consequence be regarded as permanent, and shall serve for a constant rule to the contracting Powers in matters of commerce and navigation.

ARTICLE 9

His Majesty the King of Denmark, and His Majesty the King of Sweden, shall be immediately invited by His Imperial Majesty, in the name of the two contracting Parties, to accede to the present convention, and at the same time to renew and confirm their respective treaties of commerce with His Britannic Majesty; and His said Majesty engages, by acts which shall have established that agreement, to render and restore to each of these Powers, all the Prizes that have been taken from them, as well as the territories and countries under their Dominion, which have been conquered by the arms of His Britannic Majesty since the rupture, in the state in which those possessions were found at the period at which the troops of His Britannic Majesty entered them. The orders of His said Majesty for the restitution of those prizes and conquests shall be immediately expedited after the exchange of the ratifications of the acts by which Sweden and Denmark, shall accede to the present treaty.

ARTICLE 10

The present convention shall be ratified by the two contracting Parties, and the ratifications exchanged at St. Petersburg in the space of two months at furthest from the day of the signature.

In faith of which, the respective plenipotentiaries have caused to be made two copies thereof, perfectly similar, signed with their hands, and have caused the seal of their arms to be affixed thereto.

Done at St. Petersburg, the 5/17 June, 1801.

(L. S.) ST. HELENS

(L. S.) N. CTE. DE PANIN

Formula of the passports and sea letters which are to be delivered, in the respective admiralties of the States of the two high contracting Parties, to the ships and vessels which shall sail from them conformable to Article 4 of the present treaty

Be it known that we have given leave and permission to N—, of the city or place of N—, master and conductor of the ship N—, belonging to N—, of the port of N—, of — tons or thereabouts, now lying in the port or harbor of N—, to sail from thence to N—, laden with N—, on account of N—, after the said ship shall have been visited before its departure in the usual manner by the officers appointed for that purpose; and the said N—, or such other as shall be vested with Powers to replace him, shall be obliged to produce in every port or harbor which he shall enter with the said vessel to the officers of the place, the present licence. and to carry the flag of N—, during his voyage.

In faith of which, etc.

Additional Articles, signed at Moscow, the 20th October, 1801

Whereas by the 7th article of the convention concluded the 5/17th June, 1801, between His Britannic Majesty and His Imperial Majesty of all the Russias, it was stipulated that the two high contracting Parties should mutually agree on some additional articles, which should fix the regulations and principles to be observed, as well for accelerating the judicial proceedings upon captures made at sea, as for the damages which should be allowed to the owners of neutral ships and cargoes, in cases of unfounded detention, Their said Majesties have named and authorized for this purpose, namely:

His Majesty the King of the United Kingdom of Great Britain and Ireland, Alleyne Lord Baron St. Helens, a Peer of the said United Kingdom, one of His said Majesty's Most Honorable Privy Council, and his Ambassador Extraordinary and Plenipotentiary to His Majesty the Emperor of all the Russias; and His Majesty the Emperor of all the Russias, the Sieur Alexander, Prince de Kourakin, his Vice Chancellor, Actual Privy Counselor, Minister of the Council of State, Actual Chamberlain, Grand Chancellor of the Sovereign Order of St. John of Jerusalem, and Knight of the Russian Orders of St. Andrew, of St. Alexander Newsky, and of St. Anne of the First Class; of those of Prussia, of the Black and Red Eagles; of those of Denmark, of the Dannebrog, and of the Perfect Union; and Grand

Cross of the Sovereign Order of St. John of Jerusalem; and the Sieur Victor Count de Kotschoubey, his Actual Privy Counselor Minister for the Department for Foreign Affairs, Senator, Actual Chamberlain, and Knight of the Orders of St. Alexander Newsky, of St. Vladimir of the Second Class; and Commander of the Sovereign Order of St. John of Jerusalem: who, in virtue of their respective full powers, have agreed upon the following articles:

ARTICLE 1

In case of unfounded detention or other contravention of the established regulations, the owners of the vessel and cargo so detained shall be allowed compensation for each day's demurrage, proportionate to the loss they shall have sustained, according to the freight of the said ship, and the nature of its cargo.

ARTICLE 2

If the Ministers of one of the high contracting Parties, or any other persons accredited by the same to the belligerent Power, should remonstrate against the sentence which shall have been passed by the respective courts of admiralty upon the said captures, appeal shall be made in Russia, to the directing Senate, and in Great Britain, to His Majesty's Privy Council.

ARTICLE 3

Care shall be taken, on both sides, scrupulously to examine whether the regulations and precautions agreed upon in the present convention have been observed, which shall be done with all possible dispatch. The two high contracting Parties moreover mutually engage to adopt the most efficacious measures, in order to prevent the sentences of their several tribunals, respecting captures made at sea, being subject to any unnecessary delay.

ARTICLE 4

The goods in litigation can not be sold or unloaded before final judgment without an urgent and real necessity, which shall have been proved before the court of admiralty, and by virtue of a commission to this effect; and the captors shall by no means be permitted to remove or take away, on their own authority, either openly or clandestinely, any thing from a vessel so detained.

These additional articles, making part of the convention signed the 5/17 June, 1801, in the names of Their Britannic and Imperial Majesties, shall have the same force and validity as if they were inserted word for word in the said convention.

In witness whereof, we the undersigned, furnished with the full powers of Their said Majesties, have signed in their names the present additional articles, and have affixed the seal of our arms thereto.

Done at Moscow the 8/20 October, 1801.

(L. S.) ST. HELENS

(L. S.) LE PRINCE DE KOURAKIN

(L. S.) LE COMTE DE KOTSCHOUBEY

**Act of Accession of His Majesty the King of Denmark and Norway
to the Convention between Great Britain and Russia, October
23, 1801¹**

In the Name of the Most Holy and Undivided Trinity:

His Majesty the King of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of all the Russias, having, in pursuance of their mutual desire to terminate, in the most equitable manner, the differences which had arisen between them, as well as between Great Britain and the other maritime Powers of the north, respecting the navigation of their respective subjects, concluded a convention, signed by their plenipotentiaries at St. Petersburg, the 5/17 June, of the present year; and their common solicitude extending itself not only to prevent similar altercations in future, and the troubles which might result therefrom, by establishing and applying the principles and rights of neutrality in their respective monarchies, but also to render this system common and equally advantageous to the maritime Powers of the north; it was stipulated by Article 9 of the said convention, that His Danish Majesty should be invited by His Majesty the Emperor of all the Russias, in the name of the high contracting Parties, to accede to the said convention; and His Majesty the King of Denmark and Norway, animated with the same senti-

¹Translation. *British and Foreign State Papers*, vol. 1, pt. 1, p. 402.

ments of conciliation and peace, and desirous of removing everything which has interrupted, or might hereafter interrupt, the good understanding between Their Britannic and Danish Majesties, and to reestablish fully, on its former footing, the ancient harmony and state of things, such as they existed by His Danish Majesty's treaties and conventions with Great Britain, His said Majesty has not hesitated to listen to the invitation made to him to accede to the said convention signed at St. Petersburg, the 5/17 June last.

To effect this salutary purpose, and to give to this act of accession, and to the acceptance of His Britannic Majesty, every possible authenticity, and every accustomed solemnity, Their said Majesties have named for their plenipotentiaries, viz.: His Majesty the King of the United Kingdom of Great Britain and Ireland, Alleyne Lord Baron St. Helens, a Peer of the said United Kingdom, one of His said Majesty's Most Honorable Privy Council, and his Ambassador Extraordinary and Plenipotentiary to His Majesty the Emperor of all the Russias; and His Majesty the King of Denmark and Norway, the Sieur Francis Xavier Joseph Count de Danneskiold Löwendal, Count of the Holy Roman Empire, Knight of the Order of St. John of Jerusalem, Major General in the service of His Danish Majesty, Commander of his Marine Forces, and his Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of all the Russias;

Who, after having reciprocally exchanged their full powers, found to be in good and due form, have concluded and agreed, that all the Articles of the Convention concluded between His Majesty the King of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of all the Russias, the 5/17th June of the present year, as well as the separate articles annexed thereto,¹ and the additional ones concluded the 8/20th October, 1801, by the plenipotentiaries of Their said Majesties, in all the clauses, conditions, and obligations, are to be considered as having been agreed upon, done and concluded, word for word, by Their Britannic and Danish Majesties themselves, in quality of principal contracting Parties, save and except the differences which result from the nature of the treaties and engagements antecedently subsisting between England and Denmark, of which the continuance and renewal are secured by the aforesaid

¹Relating to sequestrations, armistice, etc.

convention; and with the express stipulation on the part of the high contracting and acceding Parties, that the stipulation of the 2d article of the additional articles, signed at Moscow, the 8/20th October, 1801, by the plenipotentiaries of Their Britannic and Imperial Majesties, which fixes that the adjudication of causes in litigation shall, in the last resort, be carried by appeal, in Russia, before the Directing Senate, and in Great Britain before His Majesty's Privy Council, is to be understood, as, with regard to Denmark, that the said adjudications shall be there carried by appeal before the supreme tribunal of that kingdom.

In order to prevent any inaccuracy, it has been agreed that the said convention, signed the 5/17th June, the separate article annexed thereto, and the additional ones concluded the 8/20th, October, 1801, should be inserted here, word for word, as follows:

[Here follow the convention and additional articles.]

In consequence of all which His Majesty the King of Denmark accedes, by virtue of the present act, to the said convention, and to the said separate and additional articles, such as they are hereinbefore transcribed, without any exception or reserve, declaring and promising to fulfil all the clauses, conditions, and obligations thereof, as far as regards himself; and His Majesty the King of the United Kingdom of Great Britain and Ireland accepts the present accession of His Danish Majesty, and in like manner promises, on his part, to fulfil all the articles, clauses, and conditions, contained in the said convention, and the separate and additional articles hereinbefore inserted, without any exception or reserve.

The ratifications of the present act of accession and acceptance shall be exchanged in the space of two months, or sooner if possible; and the stipulations of the said convention shall, at the same time, be carried into execution as speedily as possible, regard being had to the full and entire reestablishment of the state of things, such as it was before the period of the misunderstandings, which are now so happily terminated.

In witness whereof, we the undersigned, by virtue of our full powers, have signed the present act, and have hereunto affixed the seal of our arms.

Done at Moscow, the 11 23 October, 1801.

(L. S.) ST. HELENS

(L. S.) F. X. J. COMTE DE DANNESKIOLD LOWENDAL

Ordinance of the King of Denmark regulating the Conduct and defining the Obligations of the Merchants and Mariners of His States in Time of War between Other Maritime Powers, May 4, 1803¹

We, Christian VII, by the grace of God King of Denmark and Norway, etc., to all whom it may concern.

Although the rules, by which merchants and seamen who are our subjects must be governed in time of war between other maritime Powers, have been laid down in a number of our previous ordinances, we nevertheless deem it necessary, in present circumstances, to set forth in a single ordinance the contents of these regulations, modified in several respects and in the form in which they must henceforth serve as the rule, in order that the greatest possible publicity may be given by these presents to the invariable principles, according to which we intend to maintain at all times the rights of the merchants and seamen of our States, and that no one may allege ignorance of the duties which he must fulfil, as a Danish subject, in a similar case. Therefore, it is our royal will that the following regulations be scrupulously observed, as the only rule of conduct, by all those who may wish to participate in the advantages which the neutrality of our flag in time of war assures to the legitimate commerce and navigation of our subjects. For these reasons, revoking by these presents our former ordinances with regard to the conduct of our subjects during a foreign naval war, we order and publish the following:

ARTICLE 1

Any merchant or navigator of our States who may wish to send a vessel belonging to him to any foreign port or place, to which the effects of a war that has broken out between other maritime Powers may extend, shall be required to secure a royal passport in Latin and such other papers and documents as are necessary for the legitimate sailing of a ship. To this end, our subjects are notified at the beginning of such a war, for what foreign ports or places it has been deemed necessary that they be provided with our royal passport in Latin.

¹Translation. French text at Martens, *Recueil de Traités*, vol. 8, p. 93.

ARTICLE 2

Such passport may not be delivered to the owner of the vessel until he shall have obtained a certificate vouching for his ownership.

ARTICLE 3

To obtain the certificate required by the foregoing article, he must be our subject, born in our States, or he must have acquired, before the outbreak of hostilities between any maritime Powers of Europe, complete enjoyment of all the rights of a domiciled subject, either of our countries or of some other neutral State. The owner of the vessel, for which the certificate is requested, must, in any event, reside in some part of our kingdoms or of the countries belonging to us.

ARTICLE 4

To procure the above-mentioned certificate, it is necessary to appear before the magistrate of the city or maritime locality from which the ship sails, or else the place of residence of the majority of the owners: all of the latter shall be required personally to certify, either by oral oath, or by formal oath in writing signed by their own hands, or else the principal owner, in the name of all, that the vessel really belongs to them, all being our subjects, and that it has not on board any contraband of war for the account of the belligerent Powers or any of their subjects.

ARTICLE 5

During the course of a foreign naval war, no one, who was born a subject of any of the Powers engaged therein, may be the captain of a merchant ship sailing under our royal passport, unless he proves that he acquired citizenship in our kingdoms or countries before the outbreak of hostilities.

ARTICLE 6

Every merchant captain, who wishes to be admitted to the command of a vessel provided with our royal passport, must have acquired citizenship in some part of our States. His citizenship papers must always be on board his vessel before its departure from the port where the passport is issued; he shall be required to make oath, in the

prescribed form, that no act shall, with his knowledge or consent, be committed or attempted, with regard to the said vessel, which might involve abuse of the passports and certificates issued to him. The oath shall be sent to the competent department with the application for the passport. But in case this can not be done because of the absence of the captain, the owner of the vessel shall be required to give notice thereof to the said department, and our consul or commercial agent in the district where the captain happens to be shall see to it, on his responsibility, that he makes the prescribed oath.

ARTICLE 7

There must not be on board vessels provided with the above-prescribed passport any supercargo, clerk, or other ship's officer who is the subject of a Power at war.

ARTICLE 8

Half of the crews of the vessels above specified, including the boatswains and boatswains' mates, shall consist of natives of this country. If the crew of a vessel should become depleted in a foreign country through desertion, death, or sickness, and if the captain should find it impossible to comply with the aforesaid rule, he shall be allowed to engage as many foreign subjects, preferably subjects of neutral countries, as he may need to continue his voyage; provided, nevertheless, that the subjects of a Power at war, on board his ship, shall in no case constitute more than one third of the entire crew. Whenever a change is made in his crew, the captain must make entry thereof, with a statement of the causes which rendered it necessary, in the vessel's muster roll, which muster roll shall be duly attested by the consul or commercial agent, or his deputy, in the first port touched by the vessel, in order that this attestation may serve as the captain's authority wherever there may be need.

ARTICLE 9

The papers and documents specified below must always be on board vessels provided with our royal passport, to wit: the certificate prescribed by Article 2.

Its construction papers, and if the vessel was not built for the present proprietor, the contract of sale or the purchase documents shall

be attached thereto. The former of these two instruments and the latter, if there be occasion, shall accompany the application of the owner for a passport.

The royal passport in Latin, with the translations thereto appertaining.

Its measurement certificate.

The muster roll of the crew, duly verified by the competent officers.

The charter-parties and bills of lading covering the cargo, and finally, the attestation of the custom house of the locality where the cargo has been loaded.

ARTICLE 10

The measurement certificate shall be issued by the officers appointed for this purpose in the maritime localities of our kingdoms and countries. In case one of our subjects shall have bought a vessel in some foreign port, our consul or commercial agent on the spot, shall be authorized to attend to the measurement and to issue to the captain a provisional measurement certificate, which shall be considered valid until the vessel reaches some port of our States, where it shall be measured and marked in due form, whereupon a measurement certificate in the regular form shall be issued, which thereafter shall form a part of the sailing papers of the vessel.

ARTICLE 11

A ship-owner is forbidden to secure and a captain to have on board false sailing papers; the ship shall not fly a foreign flag while on a voyage under papers and instruments issued by us.

ARTICLE 12

Our royal passport is valid for only one voyage; that is to say, from the time that the vessel, after having secured it, sails from the port where it was issued until its return to the same port, it being understood that in the meantime it shall not have changed hands, in which case the new owner shall be required to procure, in his own name, the necessary papers and documents.

ARTICLE 13

Since according to the generally established principles the subjects of a neutral Power are not to transport in their vessels

goods that would be considered contraband of war, if they were destined for the ports of a belligerent Power or if they belonged to its subjects, we have deemed it advisable to define expressly what shall be included under the head of contraband of war, in order to prevent the abuse of our flag in covering the transportation of prohibited articles and so that no one may allege ignorance on this score. Therefore, we declare that the articles and merchandise hereinafter specified shall be considered contraband of war: cannons, mortars, arms of all kinds, pistols, bombs, grenades, bullets, balls, guns, gun-flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, sword-belts, cartridge-boxes, saddles and bridles, with the exception, however, of such quantity as may be necessary for the defense of the vessel and of those composing its crew.

Moreover, the positive agreements contracted with foreign Powers respecting merchandise and property, the transportation of which in time of war is prohibited by the said agreements, shall remain in force, and to this end special regulations shall be drawn up, to be delivered to every ship owner when he receives our royal passport.

ARTICLE 14

In case a vessel bound for a neutral port should ship as cargo goods that would be contraband of war, if they were destined for a port belonging to some belligerent Power, it shall not be sufficient for the owner and the captain to make oath as prescribed above, but the owner and the captain shall be further required to make conjointly a declaration different from the general customs declaration, in which shall be specified the kind, the quantity, and the price of these goods. This declaration shall be verified by the customs officers at the place from which the vessel sails; after which the customs officer having jurisdiction shall forward it immediately to the general custom house, to be used in checking and verifying the arrival of the goods therein specified at their place of destination therein set forth, unless their arrival should be prevented by capture or forcible detention, whereof satisfactory proof must be furnished. This checking up shall be effected in the following manner:

The shipper of such goods must furnish a certificate in writing from our consul or commercial agent, or of their deputy, at the place for which the vessel is bound, or in their default, from the competent

magistrate or some other person publicly authorized and qualified for this purpose; which certificate shall state the arrival of the vessel and the discharge of its cargo in conformity with the aforesaid declaration, and shall be the legal evidence thereof. This certificate shall be sent to our General Bureau of Economics and Commerce as soon as the vessel shall have reached the port for which it was bound, or else after its return to one of the ports of our kingdoms. In case this certificate is not transmitted within a period proportionate to the length of the voyage, our General Bureau of Economics and Commerce shall require the owner of the vessel to make a declaration, such as he shall be willing to swear to, to the effect that he has received no news of the vessel or of the goods. If the arrival of the vessel and the discharge of the goods above specified in a neutral port can not be proved, and if a capture at sea or some other unfortunate event is not the cause thereof, the owner shall pay into the treasury of our General Bureau of Economics and Commerce a fine of twenty rigsdalers for every last of goods carried by the vessel; and both the owner and the captain shall, in addition, be liable to prosecution under the fiscal laws.

ARTICLE 15

All captains of vessels are forbidden to sail for a port blockaded by sea by one of the Powers at war; they must conform strictly to the instructions given them by the competent magistrates with regard to the blockade of such a port. In case a captain, desiring to enter a port of the blockade of which he is unaware, encounters a ship of the line flying the flag of one of the Powers at war, whose commander notifies him that this port is actually blockaded, he shall be required to withdraw forthwith and shall not attempt in any way to enter it as long as the blockade is not raised.

ARTICLE 16

None of our subjects shall be permitted to enter the service of any corsair or privateer of a country at war, nor himself to arm vessels for such a purpose, nor to have a share or interest in such vessels. No ship-owner or captain shall permit the use of his ship for the transportation of troops or munitions of war of any kind whatsoever. In case a captain is unable to prevent, because of the superiority of the force used against him, the use of his vessel for such a purpose, he

shall be required to make formal protest in a properly attested instrument against the act of violence which it was not in his power to escape.

ARTICLE 17

When a vessel that is not under military convoy shall be hailed at sea by an armed ship belonging to one of the belligerent Powers, which is authorized to inspect the sailing papers on board merchant ships, the captain shall offer no resistance to such examination, if the captain of the armed ship states it to be his intention to make it; but he shall be required to show in good faith and without concealment all the papers and documents pertaining to his vessel and to its cargo.

The captain of the vessel, as well as its officers and crew, is likewise forbidden, under severe penalties, to throw overboard, to destroy, or to hold back any of the documents forming part of the papers relating to the vessel and its cargo, either before the visit or while it is in progress. In case we shall have granted armed protection to the commerce under our flag, then merchant captains, who may desire to be received under convoy, shall be required first to show their sailing papers to the commander of the convoy and to be governed by his orders in every particular.

ARTICLE 18

Any owner or captain who shall contravene, wholly or partially, the articles and rules of this ordinance, shall forfeit his citizenship and his right to engage in maritime commerce, and shall, furthermore, be liable to prosecution under the fiscal laws, and shall be punished, according to the seriousness of the offense, either as a perjurer or as a violator of royal ordinances. On the other hand, it is our intention to protect and to maintain the rights of all our dear and faithful subjects who shall strictly conform to the above-mentioned rules in their legitimate commerce and navigation. Therefore, we have ordered all our Ministers, consuls, and other agents in foreign countries, to be most active in their efforts to prevent our said subjects from being vexed or molested, and, if they should be, to help them to obtain justice and redress of their grievances. We promise, furthermore, to support all well-founded claims which they may have occasion humbly to lay before us.

Given at COPENHAGEN, *May 4, 1803.*

Under our hand and seal.

CHRISTIAN R.

**Declaration of Neutrality of the Republic of the Seven Islands,
June, 1803¹**

The Republic of the Seven Islands, having no concern whatever in the matters in dispute between the two Powers, whose good-will and friendship it appreciates, is pleased to see in its midst the public agents of both and shall not cease to show them proper deference and regard. It deems it to be its duty to declare hereby to all Europe, to all the Powers its friends, and particularly to France and England, that it will observe the strictest neutrality, in conformity with the principles of the law of nations, convinced, as it is, that the last two States will observe the same impartiality with respect to it and will not permit the slightest violation of its neutrality, either in the matter of its political and territorial rights, or in the matter of its commercial relations and the property of its subjects. The Government of these Islands therefore orders its inhabitants to have every regard and sentiments of affection and mutual consideration for all the war and merchant ships and all individuals of the two belligerent nations. It enjoins especially, holding them to the strictest accountability, all the civil and military employees of this Republic not to permit in any way that any injury, on any pretext whatever, be done to any individual who is a subject of either of the two belligerent Powers; for the Government of the Seven Islands desires to remain constantly on the best of terms with them, and to maintain with them relations of friendship and commerce.

**Decree of the Prince Regent of Portugal concerning the Observance
of Neutrality in His States, June 3, 1803²**

As it is always the object of my paternal wishes and of my royal sentiments to maintain intact the peaceful relations which happily exist between me and the Powers, my allies and friends; as to this end, in the present circumstances of Europe, it is advisable to define the principles which must serve as the basis of a system of absolute

¹Translation. French text at Martens, *Recueil de Traités*, vol. 8, p. 102.

²Translation. French text at Martens, *Recueil de Traités*, vol. 8, p. 101.

neutrality, which it is my intention shall be religiously observed, if war should break out—which Heaven forbend!—among the Powers, my allies and friends; and considering how greatly it is to the interest of the welfare of mankind and to the tranquillity of my States and vassals to prevent the most trivial differences, which might result from ignorance of the ordinances issued to carry out the purpose which I have in mind:

I therefore declare “that the privateers of the belligerent Powers shall not be admitted to the ports of my States and dominions nor shall the prizes which may be taken, either by them or by vessels of the line, frigates or other war-ships, except only in cases where the law of nations declares hospitality to be absolutely necessary, and then only on condition that it be not permitted to sell the said prizes or their cargoes discharged in these ports, when there are prizes in such cases; nor may the vessels remain longer than is necessary to avoid danger or to receive the innocent assistance of which they may have need.”

Likewise the decree of August 30, 1780, in which the same thing is ordered, is renewed and is to be in full force.

The war council shall see to the execution of all these ordinances and shall issue the necessary orders to the governors and commanders of provinces, of fortresses, and of maritime localities.

QUELUS PALACE, *June 3, 1803.*

Proclamation of the Prince and President of the Senate of the Republic of the Seven Islands, containing Regulations governing the Conduct of His Subjects with regard to the Maintenance of Neutrality, July 9, 1803¹

On the first news of the renewal of the war between the two high Powers, England and France, the Government of the Seven United Islands hastened to manifest its sentiments of loyal friendship, devotion, and impartiality toward these Powers, by proclaiming to all Europe its absolute neutrality in the differences between the said belligerent Powers.

¹Translations. French text at Martens, *Recueil de Traités*, vol. 8, p. 103.

The Senate, now wishing to confirm still further the sincerity of the intentions of the Republic and the care it has taken to see that its subjects religiously observe this neutrality, has adopted the following provisions and orders the most exact and absolute execution thereof:

ARTICLE 1

It is expressly forbidden all subjects of the Republic to take the slightest part, direct or indirect, in the present war, either as sailors or soldiers, or in any other capacity, on the war-ships or privateers of either of the belligerent Powers, which may touch at the ports of the State or at any other place or foreign port.

ARTICLE 2

It is likewise forbidden captains and officers of our vessels to enter, on any pretext whatever, the service of either of the belligerent Powers, whether for transportation or for any other purpose; as well as to load their vessels with munitions of war or other contraband goods, to transport them to other vessels or to places or localities belonging to the said Powers, or to cities or ports which are under siege.

ARTICLE 3

Any person who shall act contrary to the provisions of the two foregoing articles shall incur capital punishment, and his property, both real and personal, present and future, shall be confiscated, and the proceeds thereof shall be turned into the public treasury.

ARTICLE 4

The present proclamation shall be printed in the two languages and published, with all due formalities, in all the cities, burghs, and villages of our Islands. Moreover, a printed copy shall be delivered by the respective governments to all the parish churches, with formal orders that they be read on the most solemn feast days, after divine service, and that they be public posted in the parish.

ARTICLE 5

In order that the present provisions may be absolutely carried out, several printed copies shall be transmitted to all the Ministers and

consuls of the Republic, with orders, under penalty of dismissal, to read them to the captains and crews of our national vessels, which may touch at the ports under their jurisdiction, and to prevent by their vigilance and authority any contravention of the rules laid down in Article 2.

ARTICLE 6

In case of any contravention, the said Ministers and consuls shall be required to arrest immediately the culprits and their vessels, and to send them under strong guard that they may be placed at the disposition of the Senate.

Given at the Senate House of CORFU, *July 9, 1803.*

(Signed) SPIRIDION GEORGE TETOCHI,
Prince and President.

Ordinance of Austria on the Observance of Neutrality, August 7, 1803¹

We, Francis II, etc., etc. Whereas we are determined to observe the strictest neutrality in the war which has broken out between France and England, and therefore that the relations of peace and friendship hitherto existing between us and each of the belligerent Powers may continue without interruption, it is necessary, in order to avoid any cause for complaint, that on the one hand this neutrality be observed by all our subjects, in particular by those engaged in navigation and maritime commerce, so far as it depends upon them, and that, on the other hand, the rights of our neutral coasts and localities be maintained, and also that commerce with each of the belligerent Powers, provided that it be carried on in accordance with the rules of neutrality, be duly ensured. For these reasons and to this end, as well as to prevent any misunderstanding or difficulty, which might result from ignorance or neglect of the said duties and rights, we publish by these presents the following provisions, which are founded in part on the rules laid down in existing treaties between the European Powers,

¹Translation. French text at Martens, *Recueil de Traités*, vol. 8, p. 105.

and in part are in conformity with the practices followed among them by virtue of the law of nations, by which provisions our civil and military officers and all our subjects shall be guided during the present naval war.

ARTICLE 1

By these presents we forbid all our subjects and all the inhabitants of our country to enlist for duty on land or sea in the service of either of the belligerent Powers, in any rank whatever, or voluntarily to enter the military service of these Powers, under the penalties provided by the laws of our hereditary countries against illegal emigration.

ARTICLE 2

Our subjects shall also abstain, in all other respects, from taking part personally in the war or in the military armaments. In particular, they shall refrain from the arming of privateers for the belligerent Powers, and shall have no interest of any kind in such enterprises, when they are carried on outside of our territory.

ARTICLE 3

We likewise forbid all our subjects and all the inhabitants of our countries to construct, equip, or sell, in the ports, roadsteads, or on the coasts subject to our dominion, any war-ships or merchant ships, for use by the belligerent Powers, under penalty of a fine of 3,000 ducats for every violation of this prohibition. Half of this fine shall be paid to the informer and half to the treasury, and, in case the culprit is insolvent, shall be replaced by proportionate corporal punishment or imprisonment.

ARTICLE 4

Furthermore, Austrian navigators, because of the neutrality adopted, are forbidden to transport either marines or sailors, under the guise of passengers or otherwise, for service under any of the belligerent Powers, in particular also to lend their names to vessels or property of the nations at war, or, finally, to convey any cargoes or merchandise to localities or ports besieged or blockaded by either of the belligerent Powers, in which case they could not enjoy the freedom of neutral flags according to the established practice of nations, nor could they expect from us any protection or intercession.

ARTICLE 5

Austrian ships may not have on board naval officers of the belligerent Powers, or sailors belonging to those Powers, exceeding a third of the crew, since the vessel would otherwise not be considered neutral.

ARTICLE 6

In the just expectation that neutral Austrian commerce shall be duly respected by the belligerent Powers and that the rights which custom confers upon them shall be exercised by them with the ordinary modifications, required by the law of nations or by treaties, we order that Austrian navigators shall not resist visit on the high seas on the part of foreign war-ships, but that they shall show without throwing any difficulties in the way the papers and documents proving the neutrality of the vessel and its cargo, and shall not throw any of these instruments overboard or destroy them in any way; still less shall they be permitted to have false, misleading, or secret papers on board.

ARTICLE 7

With regard to neutral commerce and articles which are to be considered contraband during war, we, for our part, assume the same obligations as those contracted by the other neutral Powers, to wit, Russia, Sweden, and Denmark, in their last convention with England, of June 17, 1801. In return, we shall expect the belligerent Powers to observe toward us and the commerce of our subjects the same consideration and to respect the same rights, which these Powers and the other neutral States must enjoy for the same reason. Consequently, we forbid all our subjects, who are navigators and merchants, to transport, for the Powers now at war, any of the goods or munitions of war hereinafter designated, to wit: cannons, mortars, arquebuses, pistols, bombs, grenades, bullets, guns, gun-flints, fuses, powder, saltpeter, sulphur, pikes, swords, sword-belts, cartridge-boxes, saddles and bridles. All these articles being generally regarded as contraband, only such quantities of them may be carried on neutral vessels as are necessary for their use and defense. Any of our subjects who, in spite of our prohibition, shall engage in this forbidden commerce, shall incur the penalty of their disobedience, and shall, moreover, be exposed to all the injuries that they may suffer through the capture and confiscation of their vessels by the belligerent Powers.

ARTICLE 8

With the exception of the articles designated in the preceding article, trade in merchandise, products, and wares shall be carried on without restriction with the belligerent Powers, provided the exportation of such goods from the hereditary countries is not prohibited, in general, by existing laws and regulations, or by laws or regulations that may hereafter be published. Nevertheless, all purchasing, storing, and transporting of articles of equipment and provisions for the fleets and armies at war, is forbidden. The vessels which shall enter the ports may only load such quantity as is necessary for their own use. For the rest, our subjects engaged in sea-going trade shall act with prudence, paying attention to everything that may be published on this subject by the belligerent Powers, and considering the unpleasant consequences that might result with regard to their commerce.

ARTICLE 9

As it is self-evident that, in order to avoid all difficulties on the high seas, neutral navigators must prove the neutrality of their vessel and its cargo, any of our subjects who may wish to put to sea from one of our ports and transport his cargo to distant ports, coasts, or countries, whether neutral or at war, must obtain from the nearest authority, or from the magistrate of the place, the necessary maritime passports, as well as customs certificates, charts, bills of lading, and the other customary documents, on which shall appear the name of the owner, the character and quantity of the cargo, the place of destination, and the consignee. We shall immediately publish special regulations on the form, the manner in which these passports shall be drawn up, and the precautionary measures necessary to prevent abuse thereof.

ARTICLE 10

Since Austrian vessels may, in spite of the present war, continue unrestrained their commerce and their business in the ports of the belligerent Powers, the war and merchant ships of these Powers may likewise freely enter, as before, all Austrian ports, remain there as long as they see fit, make repairs, etc., if they conform strictly to the rules and principles of neutrality. However, in order to observe on this point perfect equality with regard to war-ships and, so far as possible, to avoid all difficulties, we decree that, so long as the present

war lasts, no more than six war-ships of each of the belligerent Powers may enter our ports at one time.

ARTICLE 11

Since all vessels without exception must enjoy the protection which neutrality ensures, and absolute security in all the ports, roadsteads, and coasts subject to our dominion, it shall not be permissible for one or more vessels of the Powers at war to engage in hostilities in the said ports, nor within cannon-shot of the coasts, and consequently there shall be no fighting, pursuit, attack, visit, or seizure of ships in the said waters. Our authorities and particularly the military commanders in our seaports shall especially watch over these matters.

ARTICLE 12

By virtue of the rights proceeding from the said neutrality, it shall not be permissible for the vessels of the belligerent Powers to cruise off our ports within the distance mentioned in the foregoing article, lying in wait for ships entering or leaving; still less may they remain in the said ports for the purpose of sailing out to meet incoming vessels or of pursuing those that wish to put to sea.

ARTICLE 13

When privateers or armed merchant ships of the two belligerent Powers chance to be at the same time in one of our ports and one of them wishes to put to sea, the other may not leave within twenty-four hours, it being understood that the vessel which anchored in the port first has the right to put to sea before or after the other. War-ships or entire squadrons shall not, however, be subject to this twenty-four hour rule, provided their commanders give their word of honor to the governor or chief officer of the port that they will not pursue or molest during this period of time any vessel of the enemy. The word of honor shall be given once for all by commanders of fleets and squadrons; the captains of single vessels must renew their promise every time they wish to put to sea. As for captains of armed merchant ships or privateers, they may not leave the port within twenty-four hours, unless they give sufficient security for the fulfilment of their promise.

ARTICLE 14

Vessels of the belligerent Powers shall not be permitted to leave the port, when the arrival of a foreign vessel has been reported, unless, as provided in the preceding article, the commander of war-ships has given his word, or the merchants or privateers have furnished sufficient security, to abstain from any act of hostility against the said vessels.

ARTICLE 15

Small vessels, like tartans, trabacolos, feluccas, rowboats, &c., are excepted from this provision. Their crews and armaments being too insignificant to be able to commit any act of hostility, they may subsequently leave the port whenever they see fit.

ARTICLE 16

The enlistment of sailors for service under the belligerent Power is forbidden in our ports; and in case vessels belonging to these Powers shall have need of men to complete their crews, they shall be permitted to procure them, on condition, however, that they shall not engage any of our subjects or inhabitants of the country and that they shall not take by force the crew of any other vessel of the same belligerent Power, but that their crew shall be completed with individuals who shall enlist voluntarily.

ARTICLE 17

Prizes which the vessels of one of the belligerent Powers shall have taken from the other may be brought into all our ports, where there is a commander or governor, and specifically into the ports of Venice, Trieste, Fiume, Zeng, and Zara. Effects may be unloaded, stored, and guarded, provided they are not articles the importation of which into our countries is prohibited. They may be bought, sold, and again exported for sale elsewhere, on condition nevertheless that the competent courts of the Power making the prize shall have passed upon its legality. If, during this interval, certain effects might run the risk of being spoilt, they may be sold, on condition nevertheless that sufficient security be given to cover their value, in case the courts decide that the prize must be released.

ARTICLE 18

In case claims are made, which give grounds for the presumption that the prize was taken illegally and in contravention of the provisions of Articles 10, 11, 12, and 13 of this ordinance, our governors and presidents of regency, after having taken the necessary testimony, shall pass upon the case summarily and without appeal; and if it should actually happen that a vessel brought into one of our ports had been taken in violation of the laws of neutrality, such a prize shall be declared illegal by our officers and shall be restored to its owner.

ARTICLE 19

The belligerent Powers shall not be permitted to put ashore in our ports, roadsteads, or on our coasts any individual as a prisoner of war, for immediately on setting foot on the territory of a neutral sovereign, or one that is friendly to their Government, such prisoners must be regarded as free, and all the military and civil authorities must give them, as such, protection and assistance.

ARTICLE 20

In consequence of all these obligations which we have contracted and the measures taken for the protection of the vessels of belligerent Powers in our ports, we do not doubt that these Powers will respect with regard to us the rights that belong to a neutral State and which all the other nations enjoy. We expect them above all to give to the commanders of their fleets and to the captains of armed vessels and privateers orders not to molest on the high seas Austrian ships laden with non-prohibited goods, but to allow them to continue their course freely, if their papers and passports are in order, even though they may be bound for an enemy port. And, finally, that they shall render prompt and impartial justice to our navigators, who may have grievances against the commanders of their war-ships or privateers.

ARTICLE 21

The present regulations shall be published in the German and Italian languages in all our hereditary countries, and particularly in all our ports and countries near the coast, so that all our subjects who are navigators and merchants may conform hereto. Our civil and military

authorities must also be guided by the provisions hereof in cases which may arise, and must see that they are scrupulously executed.

Given *August 7, 1803*.

New Regulations of Sweden regarding the Commerce and Navigation with Foreign Maritime Powers in Time of War, January 21, 1804¹

We Gustavus Adolphus, by the grace of God King of Sweden, of the Goths and of the Vandals, etc., heir to Denmark and Norway, Duke of Schleswig-Holstein, etc., proclaim that, desiring to ensure to Swedish navigation, during the disturbances of the present war, all the security which the maintenance of the commercial relations of Sweden with other nations demands, and having recognized the necessity of the strictest observance, on the part of our faithful subjects who are merchants, of the obligations and precautions, which, by virtue of the formal treaties and conventions existing between us and other Powers, are required to ensure to the Swedish flag all the rights and prerogatives which it should enjoy as a neutral; and to avoid, on the other hand, everything that may in any way render it suspect to the Powers at war, and therefore expose it to insults, we have seen fit to have our regulations of December 23, 1800, revised, and to determine and prescribe with greater precision what rules must, in time of war between maritime Powers, necessarily be observed by Swedish navigators, if they desire to be respected in their voyages and to be considered, together with their ships and effects, as belonging to a neutral Power. With this view, we desire, by the present new ordinance on the same subject, to lay down and prescribe the following general rules:

SECTION 1

No vessel shall be recognized as Swedish, unless it has been built in Sweden or in some country under its rule, except in the case of a foreign vessel which, having been wrecked on the coast of Sweden,

¹Translation. French text at Martens, *Recueil de Traités*, vol. 8, p. 112.

has been bought, repaired, and equipped by Swedish subjects, or unless it shall have been formally naturalized, as purchased by a Swede in a foreign country. However, as to vessels which our subjects may have bought in the countries of the belligerent Powers and from their subjects, such vessels shall not be granted naturalization while the war lasts; but all such vessels as shall have obtained naturalization before the rupture shall be considered Swedish and neutral, from whatever place they may have come or to whomsoever they may have previously belonged.

SECTION 2

The documents which a merchant captain must have on board during a voyage, in order to prove that his vessel is Swedish, are, when he is to sail beyond the Baltic Sea and pass through the Sound, a construction certificate, a measurement certificate, a so-called *Turkish* passport issued by the Board of Commerce and a Latin translation thereof; an exemption certificate; a cargo certificate issued by the magistrate of the place; a passport for the crew; a copy of the oath of the owners; the charter party signed by the owner, the captain, and the shipper; a declaration of the cargo and of the freight likewise signed by the aforesaid persons; and, finally, a health certificate, when circumstances require it. When the vessel is not to sail beyond the Baltic, it shall not require this so-called *Turkish* passport with its Latin translation; but all the documents above specified must necessarily be carried on board when the vessel sails for a foreign land.

SECTION 3

The captain shall procure all the said documents in a Swedish port or a port belonging to Sweden; and they may not be issued to a vessel which is not in such a port, unless the vessel has, by chance or through an act of violence, lost its papers, in which case duplicates may be issued, provided the captain immediately on his arrival in port make a formal statement of such mishap, to which he shall make oath, if required.

SECTION 4

Captains are strictly forbidden to have misleading or false papers and bills of lading, or to fly a foreign flag on any occasion and on any pretext whatever.

SECTION 5

The captain and half the crew must be Swedish subjects, in order that the vessel and goods may be regarded as Swedish or neutral. But if it should happen during the stay of the vessel in a foreign country that the crew, through desertion, death, or sickness, should become so diminished that those left, that is to say, those remaining in good health, were not sufficient to man the ship, the captain shall be allowed to engage, with the knowledge of the Swedish commercial agent, as many foreign sailors, preferably subjects of neutral States, in excess of the prescribed number as he may need to continue his voyage. However, the number of subjects of the belligerent Powers on board the vessel shall never exceed one-third of the crew, the captain being required to enter every change of this kind and the causes thereof, on the muster-roll of the crew, and the genuineness of this entry must be attested by the Swedish commercial agent, or in case there is no such agent, by the magistrate, the notary public, or other person of like authority according to the practice of the country.

SECTION 6

Swedish vessels, as neutrals, may freely sail to the ports and along the coasts of the nations at war; and all goods on board neutral vessels shall be free, with the exception of contraband of war and enemy property. Therefore, all our subjects in general are forbidden, under the strictest accountability and inevitable penalties for violators, to engage in contraband trade with the subjects of any of the belligerent Powers; and it is likewise forbidden, under similar accountability and penalties, the commanders of our warships and the captains of Swedish merchant ships bound for a port belonging to or subject to either of the nations at war, to load, to have, or to conceal on board any contraband of war; and in order to avoid any ambiguity or misunderstanding as to what is properly to be considered contraband of this nature, we declare that nothing but the following goods shall be included under this head: cannons, mortars, firearms, pistols, bombs, grenades, bullets of all kinds, guns, gun-flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, sword-belts, cartridge-boxes, saddles and bridles, except such quantities of all these articles as may be necessary for the defense of the vessel and of its crew. All other articles whatsoever, not here specified, shall not be considered munitions of war or naval munitions.

nor shall they be subject to confiscation; and consequently, in so far as they can not be considered enemy property, they shall pass freely, and the vessel shall not be exposed to the slightest annoyance. Furthermore, articles of commerce, whether finished products or not, emanating from countries belonging to the belligerent Powers shall not be considered enemy property when they have been purchased by Swedish subjects and are carried for their account, which goods are not to be excepted from the exemption recognized to the Swedish flag as a neutral; but in the particular case of England in this war, our subjects who are engaged in navigation are required to conform to the provision of the convention which was drawn up between us and the King of Great Britain and Ireland, under date of July 25, 1803, and ratified on August 25 and September 23 of the same year, for the purpose of elucidating Article 11 of the treaty of commerce concluded in 1691 between Sweden and England.

SECTION 7

It is forbidden any Swedish subject to arm vessels to be used for privateering against either of the belligerent Powers, their subjects, or their property. It is likewise forbidden any Swedish subject to enter the service of foreign privateers.

SECTION 8

It is furthermore forbidden any Swedish captain to allow himself, or the vessel he commands, to be employed to transport, for either of the belligerent Parties, troops or munitions of war as above specified, unless he is constrained to do so by force and formally protests against it.

SECTION 9

When a captain, who sails unescorted, is encountered on the high seas by any war-ship or privateer of either of the nations at war who may wish to visit his vessel, he must not refuse, nor must he attempt to escape such visit; but he is required to produce his papers frankly and without dissimulation, it being in such a case strictly forbidden the captain and the crew to abstract any documents relating to the vessel and its cargo, still more to throw any of their papers overboard when the vessel is being hailed or visited.

SECTION 10

The right to visit Swedish merchant ships under convoy may be exercised only by the war-ships of the belligerent Powers, and does not extend to privateers, which do not belong to the fleets of the said Powers but have been armed by their subjects; merchant captains being required above all to be very careful to follow the orders and signals of the commander of the convoy, and to deviate therefrom as little as possible. It is, moreover, necessary that the owners of merchant ships intending to sail under convoy show their passports, certificates or sailing papers to the commander of the escorting ship, in order to receive the instructions that are to be given them as to their course.

SECTION 11

No merchant ship shall attempt to enter a blockaded port, after it has been formally notified of the state of such port by the officer commanding the blockading fleet; and to determine what constitutes a blockaded port, none shall be considered such except a port which has been so closed by a certain number of enemy war-ships stationed sufficiently near to render access thereto clearly dangerous.

SECTION 12

A captain who scrupulously observes all the rules above prescribed, shall, according to treaties and the law of nations, enjoy free and unrestricted navigation; and if, notwithstanding, he is molested or suffers injury, he has a right to expect the most energetic support on the part of our Ministers and commercial agents residing in foreign countries in all just claims which he shall make to secure reparation and indemnification. On the other hand, a captain who neglects and fails to observe the orders given him as to his course has only himself to blame for the mishaps which may result from such neglect, and must not look for our high support and gracious protection.

SECTION 13

In case a Swedish vessel should be seized, its captain must deliver to the commercial agent or vice-agent of Sweden, if there is one in the port where the vessel is brought, but in case there is not, to the nearest Swedish agent or vice-agent, a faithful report, duly certified, of the circumstances of the seizure in full detail.

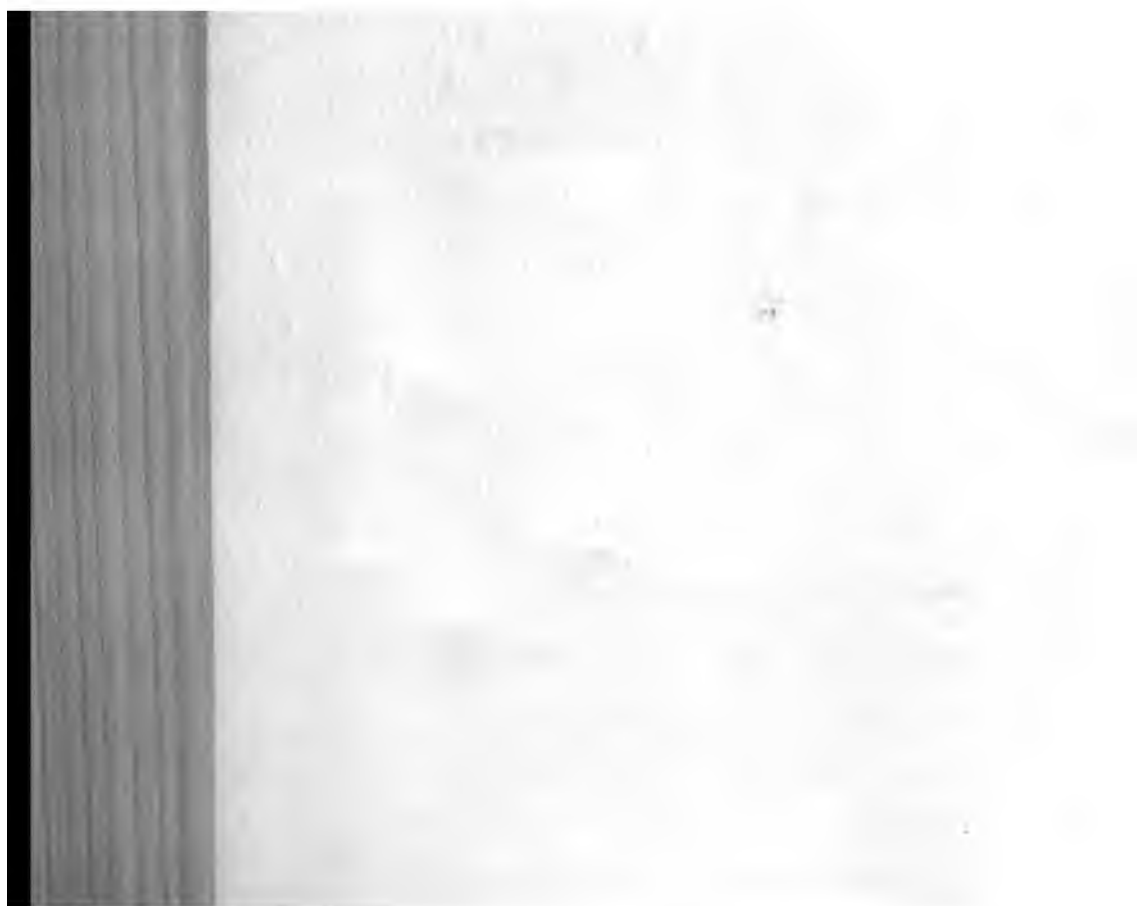
SECTION 14

In conformity with our previous orders, no foreign privateer shall be permitted to enter a Swedish port, or to send its prizes thereto, except in case of evident distress. Our subjects are likewise forbidden to purchase foreign privateers, which may have been admitted to a Swedish port for the above mentioned reason, prizes or captured goods of any kind whatever.

The present regulations shall be published wherever it is deemed necessary, in order that no one may allege ignorance thereof. We command and order all those whom it may concern to conform strictly hereto. In faith whereof we have signed these presents with our own hand and have hereto affixed our royal seal.

Given at Munich, January 21, 1804.

[L. S.] GUSTAVUS ADOLPHUS
GUST. LAGERBIELKE



Carnegie Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

Pamphlet No. 28

**EXTRACTS FROM AMERICAN AND FOREIGN
WORKS ON INTERNATIONAL LAW CON-
CERNING THE ARMED NEUTRALITY OF
1780 AND 1800.**

**PUBLISHED BY THE ENDOWMENT
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1917

EXTRACTS FROM AMERICAN AND FOREIGN WORKS ON INTERNATIONAL LAW CONCERNING THE ARMED NEUTRALITY OF 1780 AND 1800.

CALVO: *Le Droit International Théorique et Pratique*. Fifth edition, Paris, 1896.

Carlos Calvo. Argentinian publicist and diplomat; born in 1824; died in 1906; member of the Institute of International Law. M. Calvo entered, at an early date, the consular service of his country and later was Argentinian minister at Berlin and Paris. He therefore was familiar with the theory and practice of international law. Two of his most important works are:

1. *International Law of Europe and America, Theoretical and Practical*, 1868, 2 volumes. This work appeared in Spanish, was translated and expanded by the learned author into a comprehensive treatise on international law, the fifth edition of which appeared in 1896 in six volumes.

2. *Dictionnaire de Droit International*, 1885, 2 volumes. This work covers the field of international law, public and private, in the form of brief articles, arranged alphabetically under appropriate headings, and is especially valuable for the biographical notices of the various publicists who have treated international law.

M. Calvo is regarded as the leading Spanish writer on international law, and as a Latin-American by origin his various treatises have a peculiar value as a statement of the Latin-American theory and practice as well as the system of International law as understood and applied in Europe.

Volume IV, page 414, § 2498.—The rule established by the *Consolato del Mare* was not merely shaken at this time by the criticisms of publicists and by the contrary doctrine of the courts; it was also censured by most of the conventional engagements concluded between France and various nations, to such an extent that during the period between 1654 and 1780 it is found in only fifteen treaties, while thirty-six sanctioned the new principle: *free ship, free merchandise, and enemy ship, enemy merchandise*.¹

¹See especially the treaties concluded by France with Spain, November 7, 1659 [Dumont, vol. vi, part 2, p. 264; Savoie, vol. ii, p. 1; Léonard, vol. iv], with Denmark, February 14, 1663 [Dumont, vol. vi, part 2, p. 436; Léonard, vol. v], with Portugal, March 31, 1667 [Dumont, vol. vii, part 1, p. 17; Castro, vol. i, p. 338; Léonard, vol. iv], with Sweden, April 14, 1672 [Dumont, vol. vii, part 1, p. 166; Léonard, vol. v], with Great Britain and Holland, April 11, 1713 [Dumont, vol. viii, part 1, pp. 345, 377].

§ 2499.—The unshakable constancy of the English policy during this period deserves attention from more than one point of view.

On the basis of the maxims proclaimed by *Consolato del Mare*, England permitted the perpetration of the most odious attacks against the property of the neutrals, including among the articles of war contraband almost all articles of licit commerce and went as far as to confiscate articles of food and of clothing. She pretended in 1756 that by *adoption*, the Dutch vessels had been converted into French vessels, that is to say, into enemy vessels, and she condemned them to confiscation in order to prevent the French colonies to continue their traffic with neutrals and thus hope to mobilize the commerce of colonial produce. We know that the excesses of this engaging and covetous policy brought about in 1780 the belated, yet generous attempt known under the name of first armed neutrality.¹

§ 2500.—The most characteristic trait of the historic period which ends with the last half of the Eighteenth Century is the incertitude as to the real limitations to the rights of the neutrals, the logical and necessary consequence of the lack of uniformity in jurisprudence, of the absence of understanding between the secondary maritime Powers of the European Continent in order to protect themselves against the Prussians weighing on them, and of the persistency of England to cause her maritime supremacy to dominate.

§ 2501.—The secret tendencies and the righteous resentment of the principal courts of Europe were at last brought to the bursting point when England seized in the Mediterranean two Russian vessels loaded with wheat which were supposed to be intended for Gibraltar.

Panin, the Chancellor of the Russian Empire, made himself the mouthpiece of the general indignation and persuaded Empress Catherine II to make it publicly and solemnly known that she would not longer put up with the obstacles placed in the way of free neutral commerce. As a result, the Russian Government published on February 28, 1780,² the famous declaration containing the following five bases:

¹Gessner, pp. 30, *et seq.*; Flassan, *Hist.*, vol. i, chapter iii, p. 194; Valin, *Com.*, book iii, title 9; Wheaton, *Hist.*, vol. i, p. 62; Wheaton, *Elem.*, part 4, chapter iii, § 23; *Life of Sir L. Jenkinson*, vol. ii, p. 720; Heffter, § 152; Marshall, *on Insurance*, vol. i, p. 425; Ortolan, vol. ii, p. 100; Vergé, *Précis de Martens*, vol. ii, p. 348; Gessner, pp. 36, *et seq.*; Wheaton, *Elem.*, vol. ii, pp. 149, *et seq.*; Heffter, § 158; Madison *Examination*, pp. 51, *et seq.*; Ortolan, vol. ii, pp. 109, *et seq.*; Reddie, *Researches*, vol. i, pp. 92, *et seq.*; Bergbohm, *Die bewaffnete Neutralität*, 1880-1883.

²Martens, first edit., vol. ii, p. 74; second edit., vol. iii, p. 158.

1. Neutral vessels are permitted to sail from port to port and along the coasts belonging to the belligerent States, without being detained.

2. Enemy merchandise is free under neutral flag, excepting war contraband.

3. To determine that which is to be regarded as war contraband, Russia holds to Articles 10 and 11 of her treaty with England, dated June 20, 1766,¹ to which it grants obligatory force with regard to all belligerents.

4. No port shall be regarded as blockaded unless there be real and effective danger to entering it, that is to say, it must be surrounded by the enemy.

5. These principles shall serve as a rule in the procedures and decisions of maritime prize courts.

The same Government furthermore forbids the commission of hostile acts in the Baltic Sea, to which Sea it attributed the character of a closed or internal sea, *mare clausum*.

This declaration had hardly been formulated when Denmark, July 9, 1780,² Sweden, August 1, 1780,³ Holland, January 3, 1781,⁴ Prussia, May 8, 1781,⁵ Austria, October 9, 1781,⁶ Portugal, July 13, 1782,⁷ the two Sicilies, February 10, 1783,⁸ France and Spain, as well as the United States which was at this time at war with Great Britain, gave their adhesion to it; all of these Powers obligated themselves to maintain and to respect the new principles though, to uphold them, they should be forced to the recourse of arms.

One understands that principles such as Europe, stipulated by the initiative of Russia sought to cause to prevail in practice and which in evident fashion mark a new era in modern maritime law, could not receive the approval of England. The St. James' ministry refused therefore to join the league of the neutrals declaring that it would continue to hold to the stipulations, following therein a precise and reasonable

¹Martens, first edit., vol. i, p. 141; second edit., vol. i, p. 390; Wenck, vol. iii, p. 572.

²Martens, first edit., vol. ii, p. 103; vol. iv, p. 357; second edit., vol. iv, p. 189.

³Martens, first edit., vol. ii, p. 110; second edit., vol. iii, p. 198.

⁴Martens, first edit., vol. ii, p. 117; vol. iv, p. 375; second edit., vol. iii, p. 215.

⁵Martens, first edit., vol. ii, p. 130; second edit., vol. iii, p. 245.

⁶Martens, first edit., vol. ii, p. 171; second edit., vol. iii, p. 257.

⁷Martens, first edit., vol. ii, p. 208; second edit., vol. iii, p. 263; Castro, vol. iii, p. 310.

⁸Martens, first edit., vol. iii, p. 274; second edit., vol. iii, p. 267.

course, contained in England's treaties of commerce and of navigation. But once started, the movement was not to stop in the face of this selfish resistance, and England was soon compelled to abandon the violent road within which it pretended to persist in disregard of the sacred rights of neutrality; she permitted the importation under any flag of merchandise coming from the East and from the Antilles, and directed her privateers to be more moderate in their conduct.¹

§ 2502.—After the conclusion of the Versailles peace of 1783,² which closed the War of Independence of the United States, England, France and Spain again put into force the stipulations of the Utrecht Treaties³ with regard to commerce and navigation of the neutrals. Three years later, the treaty signed on September 26, 1786,⁴ between France and the United States sanctioned the general principles of armed neutrality in such a formal manner that the English Government became the object in Parliament of vehement attacks for having accepted and recognized them.⁵

§ 2503.—The abnormal conditions of the war in the train of the French Revolution unhappily brought about a return to all the violence and abuse which universal reprobation seemed to have forever put an end to. Thus, the allied governments, in disregard of the imprescriptible rights of the neutrals, arbitrarily extending the list of so-called articles of war contraband, opposed importation into France of food and merchandise of foreign origin. On the other hand, the National Convention, in a sense of legitimate defense, promulgated May 9, 1793, a decree inhibiting neutral vessels, under the penalty of confiscation, from furnishing grains and food to the enemy, and edicted the abrogation of the principle that the flag protects merchandise. The Britannic Government, secretly availing itself of this pretext to return

¹Gessner, pp. 39, *et seq.*; Wheaton, *Hist.*, vol. i, p. 221; Goertz, *memoirs*; Galiana, *Dei doveri*; Lampredi, *Commercio*; Wheaton, *Elem.*, part 4, chapter iii, § 23; Klüber, *Droit*, §§ 303-305; Ortolan, vol. ii, pp. 137, *et seq.*; Martens, *Précis*, § 325; Vergé, *Précis de Martens*, vol. ii, p. 351; Bergbohm, *Die bewaffnete Neutralität*, pp. 210, *et seq.*

²De Clercq, vol. i, p. 142; Calvo, vol. iv, p. 296; Cantillo, p. 586; Martens, first edit., vol. ii, pp. 462, 484; second edit., vol. iii, pp. 519, 541; *State papers*, vol. i, p. 424.

³De Clercq, vol. i, p. 10; Dumont, vol. viii, part 1, pp. 345, 351.

⁴De Clercq, vol. i, p. 146; Martens, first edit., vol. ii, p. 680; second edit., vol. iv, p. 155; *State papers*, vol. iii, p. 342.

⁵Gessner, pp. 43, 44; Wheaton, *Elem.*, part 4, chapter iii, § 23; Wheaton, *Hist.*, vol. i, p. 230; Ortolan, vol. ii, pp. 142, 143; Vergé, *Précis de Martens*, vol. ii, p. 354; *Parliamentary History of England*, vol. xxxvi, p. 563.

to its traditional doctrines of 1756 published on June 8, 1793,¹ an ordinance directing its privateers and warships to capture any vessel attempting to force the blockade of the French coasts, excepting therefrom Swedish and Danish vessels, which were only to be seized in case they failed to observe the notification of the blockade stated in their ships' papers.²

§ 2504.—England's allies endeavored in vain to justify these measures as being of only an exceptional and transitory nature; Russia refused to abide by them, separated herself from England, from Austria, and resolutely laid down the bases of maritime neutrality which the States bathed by the Baltic Sea proclaimed in 1800,³ These bases may be summarized as follows:

1. A neutral vessel shall not be considered as violating the blockade and shall not be subject to capture unless, after having been warned by the war-ship or the privateer of the State which enforces the blockade, it attempts to run the blockade by force or by ruse.

Merchant vessels sailing in convoy under the escort of a war-ship are exempt from search, and the statement of the convoying officer suffices to prove that they are not carrying war contraband.

Even before this new coalition had had time to gain strength and come to an understanding, England declared war against Denmark for having joined the alliance and proceeded to bombard Copenhagen; the subsequent tragic death of Emperor Paul I of Russia on March 23, 1801, finished the dissolution of an alliance from which the secondary states had had right to expect great advantages for the security of their commerce.

§ 2505.—Profiting by the successes of her marine against Denmark, England resumed the negotiations which she had conducted with Russia for some years, thus expecting the St. Petersburg ministry not only to dissolve the armed neutrality, but also of adhering to the doctrines proposed by the Britannic Admiralty. In these hopes she was particularly disappointed: as the price for some commerce ad-

¹Martens, first edit., vol. v, p. 264; second edit., vol. v, p. 596.

²Ortolan, vol. ii, pp. 144, *et seq.*; Gessner, pp. 44, 45; Wheaton, *Elem.*, pt. 4, chapter iii, § 23.

³See the conventions of Russia with Denmark of December 16, 1800 [Martens, first edit., *Supplément*, vol. ii, p. 399; second edit., vol. vii, p. 181; *State papers*, vol. i, p. 327], with Sweden of the same date [Martens, first edit., vol. vii, p. 516; first edit., *Supplément*, vol. ii, p. 389; second edit., vol. vii, p. 172] with Prussia of December 18, 1800 [Martens, first edit., *Supplément*, vol. ii, p. 406; second edit., vol. vii, p. 188].

vantages, she was forced into consenting that the Maritime Convention of June 17, 1801,¹ should by its Article 3 sanction the following principles:

1. Neutral vessels may freely sail to the ports and along the coasts of the belligerent nations.

2. Merchandise on board shall be free, excepting the so-called *war contraband* and *enemy property*, merchandise of enemy origin, but purchased and carried by the neutral preserving at all events the advantages accrued to the flag of the latter.

3. In order to remove all doubt as to the nature of the objects which constitute war contraband, the contracting parties refer to Article XI of the Treaty of Commerce concluded between themselves on February 21, 1797.²

4. A port shall be regarded as blockaded only in case entrance thereto offers a real danger by reason of the number of war-ships charged with inhibiting access thereto.

5. Judicial action against neutral vessels captured because of established suspicions or of evidently culpable facts shall be had without delay, and the mode of procedure shall be uniform and strictly legal.

The dispositions which follow shall be rigorously imposed upon all the States wishing to adhere to the treaty. The so delicate question of the visit of convoyed ships was resolved in these terms by Article 4:

1. The right of searching merchant vessels owned by the subjects of one of the two Powers and sailing under the escort of a war-ship of their nation belongs exclusively to vessels of like rank of the belligerent State, and may not be exercised by private ship owners nor by corsairs.

2. The owners of vessels destined to sail in or convoy under the escort of a war-ship shall, before receiving their nautical instructions, present to the chief of the convoy their passports and their sea certificates, in the form established by the treaty.

3. When a convoy is made by a war-ship of the belligerent parties, the latter, unless the weather conditions upon the sea or the vicinity in which the encounter takes place prevent it from doing so, shall hold itself beyond cannon range and send a longboat to the convoying vessel in order to proceed in common accord to the examination of the

¹Hertslet, vol. i, p. 208; Martens, first edit., *Supplément*, vol. ii, p. 476; second edit., vol. vii, p. 260.

²Martens, first edit., vol. vi, p. 722; second edit., vol. vi, p. 358.

papers and certificates declaring that the one is authorized to escort such or such ships with such or such cargo from port A to port B, and that the other really belongs to the royal or imperial marine of the nation whose flag she flies.

4. After the regularity of the papers has been recognized, any legitimate suspicion shall be regarded as having been removed, in the contrary case, the chief of the convoy, after having been invited thereto in due form by the belligerent shall stop long enough in order to permit the belligerent war-ship to proceed with the search of the vessels composing the convoy.

5. If after the examination of the papers, the captain of the war-ship believes that he has good reason to detain one or several of the convoyed vessels, he shall be free to do so by preliminarily placing the captain of the crew at the disposal of the chief of the escort, who in turn shall be entitled to place on board the sequestered vessels any one of his officers to follow the procedure of the investigation which it will be necessary to perform. The captured vessel shall then be conducted forthwith to the nearest and most convenient port of the belligerent nation in order to subject it to a regular examination.

A last article, the fifth, forbids the chief of the convoy to resist by force the execution of the acts prescribed by the commander of the belligerent vessel.

Various accessory stipulations of this treaty sanctioned under the guaranties in the interests of the neutrals; one of these in particular states that in case of an ill-founded detention or of the violation of the established laws, a proper indemnity shall be due the owners of the vessel and of the cargo in proportion to the losses they shall have sustained.

In order to forestall the abusive use of third flags, Article 7 establishes that, in order that a vessel may be regarded as legitimately belonging to the nation whose colors she flies, the captain and half of the crew must be subjects of the same nation.

Finally, Article 8 declares applicable to all maritime rules undertaken by the contracting parties, the principles of this treaty adhered to by Denmark on October 23, 1801,¹ and by Sweden on March 30, 1802.²

¹Hertslet, vol. i, p. 204; Martens, first edit., *Supplément*, vol. iii, p. 193; second edit., vol. vii, p. 273.

²Martens, first edit., *Supplément*, vol. iii, p. 196; second edit., vol. vii, p. 276.

§ 2506.—As also seen from this analysis, it was the purpose of the Anglo-Russian Treaty to consolidate through general formulas, the rules established by the two armed neutralities of 1780 and of 1800 with the traditional principles of the maritime law of Great Britain. Looked at from this point of view, it must be acknowledged that this arrangement was only a compromise between two opposite elements; it had, however, for its final result the partial abandonment of the violent policy of the London ministry. The nations of the North did indeed consent to weaken in fact the rigor of the doctrine that the free vessel protects the cargo it bears, and to submit to the right of search which they had hitherto opposed; but they obtained at the same time recognition for the principles of armed neutrality with regard to effective blockades and to the commerce with the colonies and along the coasts of the enemy.

To feel convinced that this was the real meaning of the St. Petersburg Treaty, it will suffice to refer to the discussions which took place in the House of Lords, at the sitting of November 12, 1801. Lord Grenville spoke first and declared that what had been stipulated was in manifest contradiction with the previous attitude of the ministers of his Britannic Majesty, and that the exaggerated pretensions of the Baltic Powers had been singularly favored by the weak and vacillating policy of England during the last years of the war waged against the United States. According to the same orator, the Government had assumed a yielding attitude whose tendency could not be controlled, and gradually it had followed a course it had not dared acknowledge one year before, while on their part the other Powers had little by little yielded of their pretensions which they had maintained relative to this question and exposed themselves, by following in the footsteps of the Russian Government, to yield by making first one and then another concession, to the reestablishment of the ancient maritime law and to the notification of conquests so laboriously realized by the neutrals during the previous twenty-five years.

§ 2507.—The final result was that the treaty of June 17, 1801,¹ proved unsatisfactory to all of the contracting parties: to England because it interfered with her policy; to the neutrals because it restricted their rights; and for this reason also Russia denounced the treaty in the course of the year 1807 by proclaiming again the prin-

¹Hertslet, vol. i, p. 208; Martens, first edit., *Supplément*, vol. ii, p. 476; second edit., vol. vii, p. 260.

ciples which formed the basis of the armed neutrality of 1801 and by pledging herself to abide by it faithfully in the future. Thus freed from its conventional engagements, the English Government reestablished its ancient doctrines not only against Russia, but even against all the other neutral Powers.

One fact worthy of our notice is that not a peace treaty or a commercial treaty concluded since by England, either with Sweden, or with Denmark, contains the slightest stipulation concerning the principles of maritime law in the interest of the neutrals who had for such a long time roused the attention of Europe.¹

Volume IV, page 518, § 2638.—The neutral State shall not merely observe neutrality, but even have its situation respected by third parties and to that effect take all necessary measures. If need there be, it may equip land and sea forces in order to safeguard its rights against any attack and to prevent the belligerents from entering its territory: This is what is termed *armed neutrality*. Neutrality, when the State which proclaims it is not in position to make it respected by an eventual recourse to armed force, is doubtless a rather precarious guaranty. It is therefore admitted that the neutral who does not feel himself strong enough to defend himself alone is entitled to ally himself with others to perfect an action and help against attacks which the belligerents might direct against their common neutrality, thus, at the end of the last century and at the beginning of the present one, we have seen the maritime Powers of the North of Europe unite collectively and mutually to protect their rights against the pretensions of England which violated the independence and the immunities of maritime neutrality.²

¹Ortolan, *Règles*, vol. ii, pp. 153–156; Cauchy, vol. ii, pp. 339, *et seq.*; Gessner, pp. 44–46; Wheaton, *Elem.*, pt. 4, chapter iii, § 23; Klüber, *Droit*, §§ 307, *et seq.*; Martens, *Précis*, § 326^a; Cussy, *Phases*, vol. ii, pp. 203, *et seq.*; Vergé, *Précis de Martens*, vol. ii, p. 355; Manning, pp. 274, *et seq.*

²Fiore, vol. ii, p. 369; Bluntschli, §§ 748, 778; Klüber, *Droit*, § 282; Heffter, §§ 145, 149.

HALL: *The Rights and Duties of Neutrals*. London, 1874.

William Edward Hall. British publicist and member of the Institute of International Law, born in 1835, died in 1894. Mr. Hall is known in international law for his *Rights and Duties of Neutrals*, 1874, and especially for his masterly *Treatise on International Law*, first published in 1880.

The latter work has run through six editions, and has been regarded as an authority—indeed, a classic—from the date of its appearance, in 1880. The writer's national bias crops out at times, and has subjected the work to no little criticism.

Page 106.—It was natural, however, that the secondary maritime powers should in time accommodate their theories to their interests. They were not sure of being able as belligerents to enforce a stringent rule; they were certain as neutrals to gain by its relaxation. Accordingly, in 1780 Russia issued a declaration of neutral rights, among the provisions of which was one limiting articles of contraband to munitions of war and sulphur. Sweden and Denmark immediately adhered to the declaration of Russia, and with the latter power formed the league known as the First Armed Neutrality. Spain, France, Holland, the United States, Prussia, and Austria, acceded to the alliance in the course of the following year. Finally it was joined in 1782 by Portugal, and in 1783 by the Two Sicilies.

It is usual for foreign publicists to treat the formation of the Armed Neutrality as a generous effort to bridle the aggressions of England, and as investing the principles expressed in the Russian declaration with the authority of such doctrines as are accepted by the body of civilized nations. It is unnecessary to enter into the motives which actuated the Russian Government;¹ but it is impossible to admit that the doctrines which it put forward received any higher sanction at the time than such as could be imparted by an agreement between the Baltic powers. The accession of France, Spain, Holland, and the United States was an act of hostility directed against England, with which they were then at war, and was valueless as indicating their settled policy, and still more valueless as manifesting their views of existing international right. It was the seizure by Spain of two Russian vessels laden with wheat which was the accidental cause of the

¹The intrigues which led to the issue of the Russian declaration are sketched by Sir R. Phillimore, iii, Sec. 186; see also Lord Stanhope, *History of England*, chap. lxii.

original declaration, and within a few months of adhering to the league France had imposed a treaty upon Mecklenburg, and Spain had issued an Ordinance, both of which were in direct contradiction to parts of the Declaration.¹ The value of Russian and Austrian opinion in the then position of those countries as maritime powers is absolutely trivial. Whatever authority the principles of the Armed Neutrality possess, they have since acquired by inspiring to a certain but varying extent the policy of France, the United States, Russia, and the minor powers.

Page 141.—The Second Armed Neutrality reasserted for a moment the principles of 1780, but one of the articles of the treaty concluded between England and Russia in 1801, to which Denmark and Sweden afterwards acceded, provided that the property of enemies on board neutral vessels should be confiscable. In 1807 Russia annulled the convention of 1801, and proclaiming afresh the principles of the Armed Neutrality, declared that she would never depart from them;² but in 1809 an ukase was issued under which "ships laden in part with the goods of the manufacture or produce of hostile countries were to be stopped, and the merchandise confiscated and sold by auction for the profit of the crown. But if the merchandise aforesaid compose more than half the cargo, not only the cargo, but the ship also shall be confiscated."³

HEFFTER: *Le Droit International de l'Europe*. Translated by Jules Bergson. Fourth French edition, enlarged and annotated by F. Heinrich Geffcken. Berlin, Paris, 1883.

August Wilhelm Heffter. German publicist; born 1796; died 1880; Professor in the University of Berlin; Member of the Institute of International Law. His well-known treatise, entitled "*Das Europäische Völkerrecht der Gegenwart auf*

¹All the signatories to the Declaration of the Armed Neutrality violated one or other of its provisions when they were themselves next at war.

²Ortolan, ii. 156.

³De Martens, *Recueil, Supp.* v. 485.

den bisherigen Grundlagen," appeared in 1844, and was regarded immediately upon its publication as a leading, if not the most scientific and accurate volume devoted to international law. The author had large experience at the bar and on the bench and was for many years an ornament of the University of Berlin. The work has been translated into various languages.

Page 362, note 4.—The principles contained in the first declaration of the Court of Russia, dated February 28, 1780, may be summed up as follows:

(1) Neutral vessels may sail freely from port to port along the coasts of the nations at war.

(2) Effects belonging to subjects of the said Powers at war are free on board neutral vessels, with the exception of contraband goods.

(3) As to the determination of what is contraband, the Empress abides by the provisions of Articles 10 and 11 of her treaty of commerce with Great Britain, extending the application of these obligations to all the Powers at war (these articles limited the prohibition to arms and munitions of war).

(4) To determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have stationed its war-ships sufficiently near to render access thereto dangerous.

(5) These principles shall constitute the rule in proceedings and judgments involving the legality of prizes.

See de Martens, *Recueil*, vol. 3, p. 158. Several other provisions contained in subsequent treaties were added to those mentioned above. The history of the armed neutrality and its numerous vicissitudes has been very well told by Klüber, *Droit des gens*, §§ 303–309; Wheaton, *History*, p. 223, 311 *et seq.* (I, 358; II, 83 ed. 2). See also the writers quoted by Kamptz, § 258. On the stand taken by the Congress of the United States of America with regard to the question, see Trescott, *The Diplomacy of the Revolution*, New York, 1852, p. 75. [Geffcken's Note: The war waged by England from 1775–1783 with its insurgent American Colonies had, by the participation of France and Spain, assumed a general aspect. France and Holland maintained the principle that the flag covers the goods; but Spain and England refused to recognize this principle. The latter especially employed its preponderant naval strength in a way that worked great hardship to neutrals. At the same time England eagerly sought an alliance with Russia.

According to the memorials of Goertz and of Sir James Harris (Lord Malmesbury), the English envoy had won Potemkin over to his side, and their scheme was only frustrated by a clever stroke on the part of the Minister of Foreign Affairs, Count Panin, a partisan of Frederick II, who had been hostile to England ever since that country had deserted Prussia during the Seven Years' War. Panin had dazzled the eyes of the Empress with the armed neutrality league of 1780 as a movement in the interest of civilization, and Catherine did not have a very clear notion of the scope of this measure, which was really directed against England. This version is no longer tenable, in view of the recent publications of Katchenowsky (*Prize Law*), of Mr. de Martens in his commentary contained in the collection of treaties concluded by Russia, volumes 2 and 3, and of Eichelmann, *Der Bewaffnete Neutralitätsbund Russlands vom Jahre 1780*. These works show that the league was a plan carefully thought out by Catherine and followed from 1778 by negotiations with Denmark for the purpose of safeguarding the rights of neutrals. It was Count Bernstorff, the eminent Danish Minister, who gave practical form to the ideas of the Empress, and the seizure of a Russian vessel by the Spanish Government was the final blow which removed the difference of opinion between Russia and Denmark with regard to the measures to be taken. The declaration adopted by the two Powers was submitted to Sweden, the Netherlands, France, the United States, Prussia, and Austria, with a view to their accession. It was the first great collective measure of maritime law, for the States which acceded to the Russian declaration adopted also its system in their intercourse with each other, and in spite of its imperfections, it was a progressive measure uniting neutrals for the defense of their rights against the arbitrary action of England. This explains the cordial welcome that greeted the Russian proposal and assures it an important place in the history of international law. Therefore if Catherine subsequently asked Sir James Harris, as he relates, "But in what way does this neutrality, or rather armed nullity, hurt you?" it was merely a part of her tactics. Harris's answer is no less interesting. "In every way that it possibly can," said he. "It lays down new laws which protect the commerce of our enemies while exposing ours; it leaves them their merchant ships for the transportation of their troops; it tends to confuse our friends with our enemies. We shall do everything we can for your ships, but Your Imperial Majesty surely does not intend by this armed neutrality that every nation shall enjoy the same right." On Catherine's refusal to aban-

don her declaration, England, in order to win over Russia and other neutral Powers, consented to make special concessions by treaty,* but refused to adhere to the declaration, although Fox, who had entered the Ministry in 1782, looked upon it with favor. On making peace with France in 1783, England simply renewed the aforesaid stipulations of the treaty of Utrecht. It refused a similar concession to Holland, which had enjoyed these rights since 1634, as well as to the United States, and thus succeeded in destroying the coalition of the signatories of the declaration, which was gradually abandoned by all the Powers which had adhered to it. On March 25, 1793, Russia even signed a treaty with England, prohibiting neutrals to give even indirect protection to the commerce or property of the French, with whose country they were at war (Article 4) Martens, *Recueil*, vol. 5, p. 115; Fox, *Memorials*, I, III). The Wars of the French Revolution in general revived these abuses. The Allied Governments forbade neutrals to carry into France provisions and goods from foreign sources. The Convention followed suit in its own defense, and on March 9, 1793, abrogated the principle that the flag covers the goods. In 1794 England proclaimed the rule that neutral nations had the right to carry merely their own products, but not those of other countries (Katchenovsky, p. 77, note i). France replied to these measures by declaring every vessel to be lawful prize that was laden even partially with goods emanating from England, no matter who was their owner, and drew up a list of articles *reputed* to be the products of English factories, no matter where they actually were made. The Baltic States, on their part, proclaimed anew in 1800 the principles of armed neutrality, with certain additions.]

KATCHENOVSKY: *Prize Law: particularly with reference to the Duties and Obligations of Belligerents and Neutrals.* London, 1867.

Dmitrii Ivanovich Katchenovsky. Russian publicist; born in 1827; died in 1872; professor of international law at the University of Kharkov. Professor Katchenovsky is well known in the literary circles of the Continent for the extent and accuracy of his attainments and is the author of several learned and interesting works.

Page 61.—In the year 1776 commenced the memorable struggle between England and the United States of America. Experience proves that civil wars are particularly cruel, and are seldom conducted on any principle of justice or international law. Consequently, in order to remove all pretexts on the part of the belligerents for the oppression of commerce, the neutral Powers hastened to publish decrees in the same spirit, enjoining their subjects under fear of punishment to observe strict impartiality in that war. But these measures were to no purpose, as, amongst the belligerents, France alone made any perceptible modification in her former practice about neutral trade, whilst Spain openly avowed her intention of acting towards the neutrals in the same way as they allowed the English to treat them. Great Britain returned to her former system, and, taking advantage of the internecine character of the war, endeavored wholly to suppress neutral commerce. Regarding her enemies as rebels, and their allies as abettors of civil war, she forbade all nations to have any connection with her former colonies. The English privateers, taking advantage of this feeling on the part of their government, and in the hope of all their captures being condemned as prizes, attacked every suspicious looking vessel they encountered. It must be added that the list of contraband goods was considerably enlarged, and the definition of blockade rendered still more vague at that time. Marriott, then judge of the Admiralty Court, laid down the following principles of maritime war as immutable: 1. The belligerent has a right to seize on board neutral ships everything which might be made use of by the enemy for his defense. 2. Great Britain, lying between the German Sea and the Atlantic Ocean, forms, by its very position, a natural blockade to all the ports of France and Spain. 3. The rights of neutral nations depend on the customs or practice of the belligerents; treaties are but temporary privileges, valid only as long as the Admiralty Court finds it convenient to make use of them. The effect of this prize practice threatened ruin to neutral commerce, since it was evident that England would allow no maritime law but her own to be enforced. Happily, however, international justice at that time found powerful supporters in other parts of Europe; for, from the year 1780, Russia formed with seven other Powers a strong coalition, which checked the violence of privateers, and secured the rights of neutrality.¹

¹Martens, *Recueil*, vol. iii, p. 158. See Additional Note at end of this Period, p. 70.

There was no difficulty in the allies agreeing upon fundamental principles: they resolved—

1. Only to permit the seizure of neutral vessels where the duties of neutrality had been unquestionably violated.

2. To require from the belligerents that judicial proceedings against neutrals should be commenced without delay, and in accordance with an uniform, clear, and legal system.

3. In case of neutrals having unjustly suffered, to compel the belligerents not only to pay damages, but also to make compensation for the insult offered to the neutral flag, otherwise to have recourse to reprisals.

4. To adopt these rules as the principle of a future maritime code (*Code Maritime Universel*).

The armed neutrality soon succeeded in its object, and put an end to the irregularities of the Admiralty Courts. France, Spain, Holland and the United States revoked their former decrees, and published new ones in conformity with the declaration of the Empress Catharine.¹ Great Britain herself was at last obliged to yield to the influence of this powerful coalition, and mitigated, though not avowedly, the severity of her prize laws.² One of the best results of the coalition was the diminution of privateers, according to the testimony of a contemporary, who says, "At the end of the war privateering had almost disappeared, and neutral commerce flourished almost as much as in a time of profound peace."³

At the conference of Versailles, the commercial treaty of Utrecht was again renewed by England, France, and Spain; but knowing by

¹The French Government had already in the year 1780 directed their admirals and privateers not to molest neutrals, even though apparently destined to enemy's ports, and in no case to capture them, unless they had a cargo of war contraband, or were engaged in the transport of English troops, or harbored Englishmen under a neutral flag. *Code des Prises*, ii, 866-868, 875, 886. Martens, *Recueil*, vol. iii, p. 163. The Dutch decree of 1781 also adopts the principles of the armed neutrality. (Martens, *Merkwürdige Fälle*, vol. ii, p. 313, Article 42.) The same may be said of Spain and of the United States of America, whose decrees are to be found in Martens, *Recueil*, vol. iii, p. 161; Wheaton, *Histoire*, vol. i, p. 367.

²In the years 1781-2, secret instructions were given to the English privateers, to the effect that they should carefully abstain from collision with neutrals. With respect to Russian ships, England showed no intention to enforce visitation, as we may conclude from the letter of Lord Malmesbury to Count Panin. See *Lord Malmesbury's Diary and Correspondence*, London, 1845, vol. i, pp. 232, 319, 410. The cabinet of St. James, however, never formally recognized the armed neutrality, but made every effort in its power to dissolve the coalition. Of the English statesmen Fox alone did not agree with his fellow-countrymen, and even intended afterwards to conclude with Holland, through the mediation of Russia, a treaty of peace on the principles of 1780. Lord Malmesbury, vol. iv, pp. 25, 26, 42, 53; Wheaton, *Histoire*, vol. i, pp. 367, 368.

³See Dohm, *Denkwürdigkeiten meiner Zeit*, Lemgo, 1815, S. 153. See also Büsch, 284.

experience that such renewals were of little practical utility, and fearing that the belligerents would return to their former malpractices, the members of the "armed neutrality" resolved to proceed with the work which had been so successfully commenced. Accordingly the principles of 1780 were more fully developed, and having been introduced nearly by all the nations of Europe into their commercial treaties and alliances, found support even in America. In the course of the next ten years, namely, from the peace of Versailles to the year 1793, measures were taken and rules laid down in order to reform the prize law of the belligerents, and to secure the independence of neutrals at sea. Reviewing the treaties of that time¹ we find in them some important clauses concerning the right of visitation (*visite*), evidence in prize courts, and the legal forms of proceeding.

1. *Visitation.* The declaration of 1780 made no mention of the right of search, and as long as the "armed neutrality" remained a powerful coalition, privateers did not venture upon a search or any other irregular proceedings. In order to prevent at a future time a repetition of such abuses, the treaties (1783-1793) generally assume that visitation ought to be confined to the verification of the papers; while search, breaking open coffers, interrogating the crew, etc., are all strictly forbidden to privateers. However, if on board the ship there are not found any papers, the privateer may, with the concurrence or at least in the presence of the owner or master, put a seal upon the cargo, make an inventory of it, and bring the ship into a port of his own country. Search then can only be made in the presence of an officer of the Admiralty Court, and immediately before the commencement of the suit. A neutral subject, on board of whose ship are found contraband goods, may deliver them up to the privateer, and is entitled to continue his voyage with the rest of the cargo without molestation.² The declaration of 1780 is also silent on the question, whether a ship sailing under neutral convoy is free from visitation, but shortly after the establishment of the "armed neutrality," England and Sweden entered into an angry discussion on that subject, whereupon the Swedish Government addressed a note to that of Russia, to ask its opinion upon the point, and received for answer, that the subjecting of ships

¹The Treaties of 1783-1793, in which are developed and explained the principles of the "armed neutrality," are to be found in the 3rd and 4th volumes of the collection of Martens.

²With respect to the treaties of the United States with Holland (1782), and of Russia with Denmark (1782) and Austria (1785), see Martens, vol. iii, pp. 427, 468; iv, p. 72, etc. The same principles are adopted in a treaty between France and England (1786). Martens, vol. iv, p. 155.

under convoy to visitation would be insulting to the national flag; and that cruisers or privateers of the belligerents ought to be satisfied concerning the neutral character of the ship and cargo, with the verbal information of the officer in command. This opinion of the Russian court met with general approbation, and being considered as one of the principles of the "armed neutrality" was inserted in almost all the treaties of that time from the year 1782.¹

2. The *evidence* in prize cases is, according to treaties, the ship's papers,² namely, passport, and documents about the nature and destination of the cargo. As to the ownership of the cargo the neutral is not bound to have documents relating to that, because the property, even of an enemy, is considered free under a neutral flag (*frei Schiff, frei Gut*). The passport, which is not usually given for more than two years, and should be renewed on the return of the ship to its own country, ought to contain the name of the ship and of its owner, as well as the domicile of the master, which is to be duly particularized. Prize courts formerly condemned all ships built in the country of the enemy, and purchased by neutrals in the time of war, without admitting any excuse in justification. The "armed neutrality" endeavored to put an end to this practice, though the different governments did not come to an agreement, without a long discussion as to the alterations which should be introduced into the maritime law on this subject. The points in dispute, however, were at last settled, by empowering the neutral to order ships to be built in the country of an enemy on his own account, or to purchase those already built, and the belligerent was bound to admit, as conclusive proof, the bill of sale. To this was added that the subject of an enemy who had been naturalized, or who was employed in the service of a neutral Power, should enjoy the rights of a neutral.³

3. With respect to the manner of conducting legal proceedings in

¹Martens, *Merkw. Fälle*, vol. ii, pp. 35-8. Here also we may refer to the treaties of Russia with Denmark, and of the United States with Holland (1782), of Russia with Austria (1785), also with France, the kingdom of both the Sicilies and Portugal (1787), and of Prussia with the United States of America. Martens, *Recueil*, vol. iv, pp. 72, 196, 229, 315.

²See particularly treaties of United States with Holland (1782), with Prussia (1785), and of England with France (1786).

³See treaties mentioned in notes, pp. 64, 65. In the treaty between England and France (1786) we find the following rules relating to Prize Courts. "Si quelque navire marchand se trouvait dépourvu de ses lettres de mer ou de certificat, il pourra être examiné par le juge compétent, de façon cependant que par d'autres indices et documents il se trouve qu'il appartienne véritablement aux sujets de l'un des dits souverains, et qu'il ne contienne aucune marchandise destinée pour l'ennemi, il ne devra point être confisqué mais sera relâché avec sa charge."

prize cases, the treaties of 1783-93 contained but few rules; they only require that cases between privateers and neutrals should be settled impartially, without delay, and in conformity with international justice. Should the judgment be considered unjust or oppressive, diplomatic agents are entitled to intervene in behalf of their fellow-countrymen, and to bring the case before the Court of Appeal.¹ A privateer, having captured a neutral ship without sufficient grounds, is held liable to damages to the injured party; but unfortunately the amount of compensation is nowhere determined in treaties; Holland and the United States alone have laid down carefully defined rules on the subject, namely, that the privateers shall repay all the legal expenses, and a percentage for *lucrum cessans* to the owner, and all persons who may suffer from the illegal capture.² All the above-mentioned treaties are imbued, so to say, with one and the same spirit, having a tendency to lessen the cruelties of maritime war, to put an end to the illegal plunder of neutrals by privateers, and to mitigate the harsh decrees of prize courts. It is remarkable that the authors of the "armed neutrality," even when belligerents, adhered to their principles. As an instance we may cite the ordonnance of the Empress Catharine on privateers (1787), issued on the occasion of the war with Turkey, which, being in perfect conformity with the declaration of the Empress in 1780, is, according to the opinion of Hautefeuille, one of the most liberal decrees ever published by a belligerent. The Empress prescribed to privateers the courtesy due to neutrals, and greatly restricted the right of visitation, confining it to particular seas.³ Sweden in the

¹In addition to the treaties already cited, reference may be made to that between Denmark and Genoa (1789), in which the influence of the "armed neutrality" is apparent. Martens, *Recueil*, vol. iv, p. 438. Denmark and Genoa imposed upon their consuls the duty of defending neutrals in the prize court, and appointed advocates for the same purpose; it was also agreed, when the evidence of neutrals and captors was conflicting, to give the preference to the former, "parceque l'intérêt du capteur doit toujours rendre ses accusations suspectes." This remarkable rule, however, does not occur in other treaties.

²By the clauses of this treaty the rights of neutral merchants in the prize courts are fully secured. Martens is perfectly right in observing, that neutral merchants can not be considered as compensated by the mere payment for the cargo plundered and injured, but are also fully entitled to an indemnity for what might have been gained, if the vessel had in due course reached its place of destination (*lucrum cessans*). *Essai*, s. 30, p. 95. Other treaties abrogate some unreasonable contributions imposed on neutrals, as, for example, fees or other duties. Martens also gives a full account of the conventions relating to prize jurisdiction of that time, and of the decrees on that subject.

³Martens, *Recueil*, 336. However it is to be observed that in that war the Greeks, and not native subjects of Russia, received letters of marque from the Empress. In the first war with Turkey (1767-74) Russia had not recourse to privateering. Martens, *Recueil*, vol. ii, pp. 32, 33; *Essai*, p. 46, s. 9.

decree of 1788 also sanctioned the principles of the "armed neutrality," and conformed her prize jurisprudence thereto.¹ The declaration, however, of the court of St. Petersburg, published at the end of the war with Sweden (May 6, 1789), was much more extraordinary, for therein the Empress promised the protection and the assistance of the Russian fleet to the merchants of all neutral nations.² Thus the freedom of neutral commerce became every year more prevalent in Europe, and naval wars were greatly mitigated. Some States found it even advantageous to put an end to privateering. The first attempt to that effect was made by the United States of America in a treaty with Prussia, in which also the right of seizure of war contraband was modified into that of preemption (*droit de préemption*).³ The question of the abolition of privateering was subsequently taken up by France.⁴ Unfortunately these humane projects were not destined to be carried into effect, for in 1793 there commenced in Europe a long revolutionary war, which threw all international relations into confusion, almost annihilated the political institutions of Europe, and shook to its foundation the very idea of neutrality.

¹Martens, *Recueil*, vol. iv, pp. 394-410. In this decree Sweden admitted the immunity of the neutral flag, and exempted from visitation ships proceeding under neutral convoy. Only in the definition of war contraband does the decree not altogether correspond with the declaration of 1780; for instance, it includes in the list of prohibited goods, besides arms and ammunition, money, but the Swedish king, in consequence of a protest from several powers, subsequently revoked this decree, and returned to the principles of the "armed neutrality."

²Martens, *Recueil*, vol. iv, p. 428.

³The treaty of 1785 was concluded by Franklin, the well-known opponent of privateering. In his opinion, this institution ought to be put an end to for the good of mankind and the maintenance of peace. The custom of plundering merchant ships is a remnant of piracy, it produces no benefit at all. At the commencement of a war, indeed, some rich ships may fall into the hands of the captors and be taken by surprise, but the enemy soon becomes more careful and protects the commerce of his subjects by strong convoys. Consequently in the course of war, as the number of privateers increases so does the value of the captures diminish.

⁴In 1792, the French diplomatic agents were instructed to ascertain how far foreign nations were inclined to abolish privateering. Unfortunately the political circumstances of that time prevented any sympathy or confidence being placed in the intentions of France. With the exception of the Hanseatic Towns (which made no use of privateers) not a single state of Europe responded to the question proposed. See Büsch, 290, 3; Ortolan, *Diplomatie de la Mer*, vol. ii, p. 56; Cauchy, *Du respect de la propriété privée sur Mer*, annexes, N. 1-4. As to the United States, they answered the French communication favorably, though rather in a vague manner.

ADDITIONAL NOTE BY THE AUTHOR

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In a juridical work like the present, the "armed neutrality" is chiefly considered in its effects upon treaties and international customs; as to the political events which led to its foundation they are recorded by some contemporaries of Catharine II. It would be long, and even useless, to enumerate here all the books and pamphlets which give or pretend to give information on the origin of this celebrated league. As the chief authorities upon the subject may be cited the memoirs of M. Dohm (*Denkwürdigkeiten meiner Zeit*, Hannover, 1814-15-18); Count de Goertz (*Mémoires sur la Neutralité armée*, Bâle, 1801, Paris, 1804), and Sir James Harris' (Lord Malmesbury) Diary, London, 1845.

These diplomatists, though differing from each other in some details, look upon the whole affair nearly in the same light. According to their opinion, the declaration of 1780 arose out of a court intrigue, aimed at the influence of Prince Potemkin, the great favorite of the Empress, and had no other object than to ruin his political power. Catharine herself seemed to have been almost an involuntary agent in the hands of Count Panin, the minister of foreign affairs, with whom the scheme originated. The defense of neutral rights furnished this statesman with a good pretext for overthrowing his rival. By giving full credit to this testimony, and deriving all our information from the same source, it might be supposed that the authors of the "armed neutrality" hardly knew what they were about, and that they only became fully aware of the importance of their acts from subsequent events, and when almost the whole of Europe had acceded to the principles of 1780. Now all this story seems to us, if not a pure invention, at least a great misrepresentation of the facts. The truth is that the success of the Russian policy having excited great envy, the open and secret enemies of the "armed neutrality" had recourse to every kind of obloquy and literary abuse, in order to discredit it in the eyes of the world. Consequently the most absurd rumors, about the authors of the coalition as well as their motives, were circulated abroad, and have been repeated up to the present time. However difficult it would be to refute these calumnies without access to the state archives, where the whole correspondence relating to the subject is deposited, we humbly submit to our readers the following considerations, which are founded upon documentary evidence, or derived from Russian historians.

The first circumstance to be noticed is, that the contention between Prince Potemkin and Count Panin had no such signification, with reference to the "armed neutrality," as foreign diplomatists seemed to imagine. The principal question in dispute was the English alliance; in fact, the first of these statesmen strongly recommended his sovereign to take part in the American war; the second, on the other hand, advised her to stand aloof from the great conflict, wherein she would

be no gainer, and might lose the advantage of being appealed to as an impartial mediator. As long as the Empress hesitated to avow her decision on the best course to be pursued, the opportunity for a neutral league was necessarily delayed. It may be also easily understood why the cabinet of St. Petersburg kept all these proceedings a secret from the English minister, whose connections with Potemkin were probably as well known to Catharine as to the minister for foreign affairs. It must not be supposed, however, that the declaration of 1780 burst forth as the feat of a skilful courtier, devised to injure a rival. We have every reason to believe that this act had been long in preparation, before the Empress found a favorable opportunity for offering it to Europe, as the most efficient measure against the violence of belligerents. Some diplomatic papers of that time, published from the state archives of St. Petersburg a few years ago (see the *Maritime Magazine*, or the *Morskoi Sbornik* for 1859, Nos. 9-12), prove that the seizure of Russian merchandise near Cadiz by Spanish cruisers was only the last of many grievances reported to Catharine by her ministry. From the very beginning of the war the atrocities of privateers induced the Russian Government to take serious measures for the protection of commerce. Thus in 1778, when American cruisers made their first appearance in the northern seas, the Empress gave orders that a squadron should be stationed near Archangel to convoy English traders. Soon afterwards Catharine represented to Denmark and Sweden the urgent necessity of common action against cruisers in the Baltic (*Lettres du Comte Panin à M. Sacken, Chargé d'Affaires à Copenhague, 16 Août, 1778, et note du Comte Bernstorff, 28th Sept., 1778*). It is remarkable, however, that Count Panin, by recommending the Empress to declare in London and Paris her firm intention to close the entrance of the northern sea to all cruisers, prevented at that time all further proceedings against belligerents, and this declaration appeared to him quite sufficient for the purpose. In the confidential report addressed by the Count to Catharine, and approved by her on the 22d Dec., 1778, we observe that his intentions were then not so hostile to England as Sir James Harris expected. The dangers of a breach with Great Britain are therein set forth without reserve. The Russian minister submits to his sovereign the future line of conduct to be adopted towards belligerents. In his opinion the question of neutral rights, being very intricate, great moderation and circumspection were requisite to be used in dealing with it. He strongly recommends that Russia should attend to her own interests, and avoid a close alliance with her Baltic neighbors upon that question. Thus a cooperation with Sweden appears to Count Panin not desirable for many reasons. "The Swedish policy of defending neutral rights," says he, "may cause us great difficulties, and involve our government in a disastrous war with the greatest maritime Power of Europe." Accordingly, when the cabinet of Stockholm in 1779 made the first proposals for a treaty to that effect, they were declined by Catharine. In short, the documents we have cited here give us no indication whatever that Count Panin was the real author of the

"armed neutrality." On the contrary, the spirit of the declaration of 1780 seems not to be in accordance with his former views as well as with his general conduct as minister for foreign affairs. We are more inclined to think that the new scheme of neutral policy was originally devised by the Empress herself. The first precedent for it she might have found in the convention of 1759 mentioned before. It must be added that her various reading and intercourse with foreign diplomatists made her better prepared to conduct the foreign affairs of Russia, according to her own enlightened views, than, like some other sovereigns, to follow the advice of her council. In fact, the political talents and literary accomplishments of Catharine are so well known, that they afford sufficient grounds for our adhering to that opinion. Many important state papers were the production of her mind and pen. The authenticity of her correspondence with Voltaire is undoubted, and was never disputed. The same may be said of the "General Instruction for the Government of the Empire." This monument of the legislative wisdom of the Empress, having been translated into foreign languages, is as well known in Western Europe as in Russia. But the most improbable part of the story about the origin of the "armed neutrality" is that Catharine when signing the declaration did not understand its meaning. Whatever her faults might have been, she was perfectly able to appreciate the consequences of her political acts. It must not be forgotten that Sir James Harris puts into the mouth of one of his confidants the following remarks upon this new plan for the defense of neutral rights: "the declaration is the child of the Empress' own brain." The five articles were sent in the rough draft to Count Panin, who made no addition to the original; see *Lord Malmesbury's Diary*, vol. i, p. 266. The Count himself, who very soon fell into disgrace, is reported to have abjured all participation in devising the principles of 1780. When questioned upon this point he once said, "they who think that anybody suggested to the Empress the idea of a neutral league, or has now power enough to put it out of her head, are greatly mistaken." *La Cour de Russie, il y a cent ans*, Berlin, 1858, p. 253. All these facts seem rather to corroborate our views than otherwise. However it may be, we sincerely hope that the absurd fables about a court intrigue will fall to the ground, as soon as the historical truth, contained in the diplomatic documents, shall be fully brought to light. May this be done by future inquiries. Nothing but a careful study of the whole reign of Catharine can lead impartial men to safe conclusions upon the "armed neutrality." It will then be easily admitted that its origin is due as much to the natural course of events as to the liberal tendencies of the Russian Empress, and the philosophical spirit of her time.

PERIOD IV

From 1793 to 1815

The continental governments having, as we have seen, agreed on the fundamental principles of prize jurisprudence, had entertained the idea

of drawing up a code of neutrality; but these intentions, originating in the declaration of 1780, were frustrated by the breaking out of the French Revolution. The political events which occurred in France, and afterwards in other countries, not only prevented the further extension of the "armed neutrality," but afforded a pretext to the belligerents for resuming their former harsh proceedings. Consequently international treaties having been rescinded in the midst of the general commotion of Western Europe, Admiralty Courts began to oppress neutral merchants under the authority of the severe instructions of the belligerents, and privateers not only refused to acknowledge the immunity of the flag, but even disavowed the doctrine of the *Consolato dei Mare*. In vain the northern Powers endeavored to form a permanent coalition for the protection of their commerce. The league they entered into (1800) only continued a few months, and failed of attaining the success which attended the first armed neutrality at the time of the American war. By the treaty of St. Petersburg (1801) the allies even made some concession to England, and considerably modified the principles of Catharine II. In general, during the French revolutionary wars, the power of the neutral governments diminished, and England returned to the system of the Middle Ages without opposition. At the end of the 18th century the decisions of Sir Wm. Scott (afterwards Lord Stowell), supported by the British navy, were enforced on neutrals. The English Government, however, failed in attaining an absolute supremacy at sea. When Napoleon established the continental system (1806) Sir Wm. Scott was obliged to give up the rules of English practice, which he had invariably followed before. In the course of time the belligerents, attacking one another with retaliatory measures, proceeded to the last extremities, and declared neutral commerce unlawful, and even criminal in their eyes. In this manner, the very idea of neutrality was, so to say, repudiated, and privateers as well as prize courts were converted into instruments of commercial inquisition. Such are the final results of this destructive period. In order to define them more accurately, we propose to direct our attention to facts¹ and to lay before the reader: 1. The successive modifications of the principles of 1780. 2. The prize law of England and France under Sir Wm. Scott and Portalis. 3. The irregular character of privateering and prize proceedings at the period of the continental system.

¹Compare generally Comte de Garden, *Histoire de Traités*, vol. vi, pp. 301-381; Wheaton, *Histoire du Droit des Gens*, vol. ii, pp. 13-106.

The decree of the year 1792, according to which France renounced privateering, was not carried out. Having declared war against Great Britain the National Convention issued letters of marque, and accordingly many small vessels were dispatched for the purpose of plundering ships engaged in commerce. The former laws, however, respecting maritime prizes, and consequently the ordonnances of the year 1778, were confirmed, and privateers received instructions to respect the immunity of the flag.¹ In the meantime, England not only refused to adopt the principles of the "armed neutrality," but skilfully took advantage of circumstances, in order to add to the severity of maritime warfare. Observing that the enemy suffered for want of provisions, she adopted what might be called a system of famine (*système de famine*), namely, entered into conventions² with the principal Powers of Europe in order to forbid the importation of corn and food into the French ports, and the carrying on of any intercourse with France. To counteract these measures the National Convention had recourse to retaliation, and by the decree of May 9th, 1793, enjoined cruisers and privateers to seize neutral vessels destined for England, laden with corn or provisions, or freighted with English merchandise. By this decree English property was declared lawful prize, and even neutral cargo, subject to the right of preemption (*droit de préemption*) on the part of the French Government. These arbitrary rules were to remain in force until the interested Powers obtained from England a strict observance of the rights of neutrality. A few exceptions were made in favor of Denmark, Sweden, the United States of America, and other governments with which France had treaties of commerce.³

For the purpose of meeting this ordonnance of the Convention, England extended still further the right of preemption, had recourse to a stricter system of blockade, and gave to privateers such instructions against neutrals as authorized them to stop with impunity all merchant vessels.⁴

¹See the French ordonnances respecting privateers and prizes which were published at this time. Martens, *Recueil*, vol. v. pp. 376-400; vi. pp. 752-776; Lebeau, *Nouveau Code des Prises*, iv. (Paris. an IX.)

²Martens, *Recueil*, vol. v. pp. 439, 473, 483, 487.

³See Hautefeuille, vol. iii, pp. 276 *et seq.*

⁴Martens, *Recueil*, vol. v. pp. 596-605. Besides the Orders in Council of the 8th June and 6th Nov. 1793, according to which England extended the right of preemption to all neutrals, and made lawful prize the produce of French colonies, privateers received also secret instructions very oppressive to general commerce. See Comte de Garden, vol. vi. pp. 324, 330.

The Danish commerce suffered particularly at this time. Up to the 19th August, 1793, 189 Danish vessels had been seized, and the compensation promised them for provisions was only very reluctantly paid, and after much delay. In vain Count Bernstorff attempted, in his celebrated memorial, to show to the cabinet of St. James, that the neutral Powers had nothing to do with the peculiar character of the war, and that, according to the principles of independence, they ought to enjoy undisturbed the advantages of commerce, in the midst of the conflict. To this the English Government replied that France had placed herself out of the pale of civilization; that no Power could be considered neutral with reference to her; and that all nations were bound to take part against her.¹

Having exhausted in conference all power of persuasion, Denmark proceeded to arm her fleet, and concluded with Sweden an alliance for the protection of commerce (1794).² About the same time the conduct of England provoked the resentment of the United States of America. Jefferson, the then secretary for foreign affairs, resisted energetically the violence of the privateers, and protested that the sale of agricultural produce was always considered free; that the belligerents were not entitled to extend the catalogue of contraband on their own authority, and added that the submission to that authority would amount to the surrendering into the hands of one nation the commerce of the world. Yielding to these remonstrances England consented to the appointment of a mixed commission, to examine the claims of American subjects to compensation; as to the exertions of the United States in favor of the immunity of the neutral flag, they remained unsuccessful. By the treaty of 1794 both Powers reverted to the principles of the *Consolato del Mare*, and extended the catalogue of contraband to some articles *ambigui usus*.³

Having made such concessions to the cabinet of St. James, the United States had no right to expect that any greater regard should be shown to their flag by the other belligerents; in fact, even before the conclusion of the treaty to which we have alluded, France had complained that the Americans permitted the English to seize and condemn as lawful prize the merchandise of their own subjects; but when the news that the treaty of 1794 was signed reached Paris, the French Government im-

¹See the diplomatic papers on this subject in Martens' *Causes Célèbres*, vol. ii, pp. 333-63; *Recueil*, vol. v, pp. 569, 593.

²Martens, *Recueil*, vol. v, p. 606.

³*Ibid.* 640; Wheaton, *Historie*, vol. ii, pp. 39-47.

mediately had recourse to reprisals, and adopted on their side towards the Americans the principles of the *Consolato del Mare* (Decree, March 2, 1796). In justification of which measures the Directory alleged the following reasons 1. According to the treaty of 1778, between France and the United States, it was laid down that all privileges granted by one of the contracting parties in favor of a third Power should belong to the other party. 2. That it would be unreasonable to expect them to observe the immunity of the flag with respect to those nations who renounce it of their own accord. After this decree the cabinet of Washington lost no time in breaking off commercial relations with France.¹

Thus the example of one belligerent acted upon the other, and the old system of the *Consolato del Mare* took the place of more liberal principles of neutral commerce. The obstinacy of the belligerents increased every year, and to all the terrors of unbridled privateering was added oppressive procedure in the prize courts. While Marriott, in England, was inclined to support all the abuses of belligerents,² the French Government referred cases, relating to maritime prizes, to the ordinary courts of law; and even conferred a prize jurisdiction on their consuls in neutral ports. The partiality of these new judges reached its greatest height at the end of the 18th century; they called upon neutral ships to produce all papers required by the French regulations, without paying any attention to the difference of European laws in that respect, and considered every ship, which had once belonged to the enemy, lawful prize, though she had afterwards been transferred to a neutral by a regular bill of sale.³

¹Wheaton, *Histoire*, vol. ii, pp. 50, 51; Martens, *Recueil*, vol. vii, p. 376. Friendly intercourse between France and the United States was reestablished by the *Morfontaine Treaty* in the year 1800. Martens, *Recueil*, vol. vii, p. 484. By this convention both parties reverted to the former liberal principles of neutrality, and the immunity of the neutral flag was again acknowledged.

²This judge was the great opponent of neutral commerce; he did not consider the English customs sufficiently severe in checking it, and laid down in the year 1794 an extraordinary rule, according to which neutral nations were only permitted to carry their own produce, and not that of other countries. Jacobsen, *Seerecht*, i, preface. Marriott defended this arbitrary limitation of trade with the enemy, on the principles of the Navigation Act, which was then adopted by many states in imitation of England.

³Several French jurists then, and afterwards some members of the Directory itself, protested against this unusual change introduced into prize practice (*Lebeau*, vol. iv, pp. 345, 403-415.) Portalis justly says, "C'était une grande erreur d'avoir attribué la connaissance des prises aux tribunaux ordinaires. Quand il s'agit de la justice des nations entre elles; quand il s'agit des droits de la guerre et de leur exécution; quand il faut peser les traités, décider si une nation est amie ou neutre, on est étonné sans doute de voir intervenir une autre autorité

In the year 1798 the Directory published two new decrees, unprecedented in history; one of them shortened prize proceedings to such a degree that there was not time enough for neutrals to bring forward their evidence; the other introduced a rule, whereby the character of the ship was to be determined by the cargo, that is, it declared lawful prize all neutral ships in which were found any article of English manufacture.¹ By the introduction of these decrees, international trade ceased to have free course; visitation degenerated into abusive search, and privateers became pirates. In answer to the question of neutral merchants, what was to be considered war contraband? the French privateers replied, "all that is worth seizing" (*tout ce qui vaut la peine d'être pris*).

It appears, then, that the principles of the "armed neutrality" were abandoned during these revolutionary wars. In fact, the United States of America, on the conclusion of a new treaty with Prussia in the year 1799, even proposed to abolish the immunity of the flag; or, at least, to postpone its acknowledgment to a more favorable time.² Only Denmark and Sweden adhered to the traditions of their policy, and, in order to protect their commerce, resumed the practice of making use of convoy. This proceeding was resisted on the part of Great Britain, and, in a short time, produced a violent collision.³ Both the neutral powers were already on the point of yielding to the English Government, when they found an energetic supporter in the Emperor Paul I. Having been disgusted with the violent conduct of the belligerents, he published, August 16, 1800, a declaration for the purpose of re-

que celle du gouvernement." According to the custom of all governments prize jurisdiction belongs to special courts, established for the purpose. Pritchard, *Digest*, vol. iii, pp. 163, 412; Wildman, *Institutes*, vol. ii, pp. 163, 361. The appointment of prize judges in neutral ports was also an anomaly contrary to international law; besides, the consuls, to whom the Directory gave jurisdiction in these cases, were, according to Büsch, often part owners of the privateering vessels, and were consequently interested in the condemnation of the neutral merchant. Büsch, *Das Bestreben der Völker*, S. 393.

¹See Comte de Garden, vol. vi, pp. 335-337; Robinson, vi. Coll. 33, not.; Büsch, 332-336, 394-411; Jacobsen, *Seerecht*, 69; Martens, *Recueil*, vol. vi, p. 398. In a very short time after the publication of these decrees there were confiscated more than 300 neutral vessels, so that merchants did not dare to undertake a voyage, excepting under the protection of convoy.

²Wheaton, *Histoire*, vol. ii, pp. 55-76; Martens, *Supplément*, vol. ii, pp. 227. However the right of preemption of war contraband was confirmed in the new treaty. It includes, also some liberal interpretations of prize law. See articles 14, 16, 21, 23.

³Martens, *Erzähl*, vol. i, pp. 299, 302; ii, pp. 39-58; Wheaton, *Histoire*, vol. ii, pp. 76-83.

establishing an armed neutrality; and, finding Denmark, Sweden and Prussia favorable to his views, signed, in conjunction with them, on the 4/16 December, 1800, the memorable convention, in which, in addition to the principles of the Empress Catharine II, there were laid down the following rules, as being in conformity with international law.

1. Blockade is only reputed to be broken by neutrals when, disregarding the warning of the belligerent, they enter the blockaded port by force or fraud. 2. Neutrals under convoy are free from visitation; the declaration of the officer in command of the convoy to be considered sufficient.¹

Unfortunately the second armed neutrality was not so successful as might have been expected. The northern coalition did not last long, and was put an end to by the bombardment of Copenhagen and the death of the Emperor Paul.²

On the succession of Alexander I to the throne of Russia new prospects of peace opened to the world. He proposed to the cabinet of St. James to hold a conference, which should lay down the fundamental principles of neutral commerce; he also promised to invite the Danish and Swedish Governments to accede to them, and, in fact, on the 5/17 June, 1801, there was signed between Russia and England a new convention, in which both parties made some important mutual concessions; the greater part however of the regulations of the armed neutrality, such as the definition of war contraband and the free access of neutral merchants to the ports of the belligerent, remained unaltered. With respect to colonial trade, European merchants were placed on an equal footing with the subjects of the United States of America, that is, obtained the right to import from the enemy's colonies goods for their own use. But the change in the definition of blockade, though dependent on one word (*or* instead of *and*), seemed to be more important.³

¹For the acts relating to the second armed neutrality, see Martens, *Supplément*, vol. ii, pp. 344-486; and Baron Carl Martens, *Nouvelles Causes célèbres*, Leipzig 1843, vol. ii, pp. 176-272; see also Miloutine, *Hist. of War of 1799*, a work of the present Russian secretary of war at St. Petersburg, published in the Russian language. He also enters into the history of the second armed neutrality.

²Of treaties concluded under the second armed neutrality we can only refer to that between Russia and Sweden, 1st March, 1801. Martens, *Supplément*, vol. ii, p. 307.

³Lord Grenville himself says in his speech that in the armed neutrality it was required that blockading ships should be in sufficient number, "*and* stand near the port;" on the contrary, in the convention of 1801 this *and* was changed into *or*. Lord Grenville seems to attach much importance to this alteration, and to the manner in which the treaty was drawn up. V. Subst. of Speech, Nov. 12, 1801, p. 82-3, Lond. 1802.

Ships under convoy were only exempted from the visitation of privateers. The principle that the flag covers the cargo (*le pavillon couvre la cargaison*) was also rescinded on the condition that enemy produce and manufactures (*marchandises du crû ou de fabrique de l'ennemi*), purchased by neutral subjects and laden as their own property, should be free. As additional articles to the convention some clauses relating to irregularities and defects in prize practice were introduced. 1. The contracting parties gave diplomatic agents the right of protesting against unjust decisions, and of bringing the case before the highest Court of Appeal. 2. Without the consent of the Admiralty judge it was forbidden to unlade and sell the property in dispute prior to its being adjudged lawful prize. 3. If a ship were arrested without sufficient cause it was stipulated that for every day's delay compensation should be paid by the privateer.¹

In the following year the St. Petersburg convention was after some hesitation accepted by Sweden and Denmark, but they gained little advantage by this vacillating policy, as Great Britain paid no attention to the observance of the provisos she had entered into, and finding the convention too unfavorable to her interests used every effort to interpret it according to her own views.² Sweden soon afterwards, yielding to the demands of the cabinet of St. James, signed a new convention with England in 1803, wherein the catalogue of war contraband was considerably enlarged.³

¹The convention of 1801 is inserted in Martens.

²See a curious pamphlet by Jacobsen, "*Versuch eines Commentars zu den Russischen Beschwerden über die Beeinträchtigung des Russischen Handels durch England*." Altona, 1808. In illustration of the manner in which England interpreted the convention of 1801, we quote from this work the following facts. When the members of the opposition, Lords Grenville and Howick, observed in parliament that the convention abandoned the colonial and coasting trade to neutrals, the minister, Lord Sidmouth, answered, that this was not evident from the words of the treaty, and that the contracting parties might enter into a new arrangement about it. As little foundation was there for the statement of the English ministry, that the neutral powers had shown their confidence in the impartiality of the British Admiralty Court, by declining to insist upon any conditions in favor of their own subjects; this is indeed refuted by the supplementary articles of the treaty. Sir William Scott also asserted that the convention was only applicable to Russian ships, and not to Russian produce found on board neutral ships. In that case he followed the precedents of English practice; according to this interpretation, hemp, masts and some other articles, which according to the treaty were not reputed to be contraband, were pronounced by the English judge to be lawful prize, and that even in those cases in which the legality of the neutral commerce did not admit of doubt. Complaints were also made of delay in the proceedings, and that cases which might have been disposed of in six months were protracted by the court for two or three years.

³Martens, *Supplément*, vol. iii, p. 525.

KLEEN: *Lois et Usages de la Neutralité.* Paris, 1898.

Rikard Kleen. Scandinavian publicist; born in 1841; studied at the University of Upsala; attaché of the ministry of justice in 1863; attaché of the legation of Sweden and Norway at Turin, and later at Florence; chief of division of ministry of foreign affairs at Stockholm; secretary of legation at Vienna; member of the Institute of International Law; member of the International Sanitary Conference at Vienna. His publications include *Droit naturel (Naturrätt)*, 5 volumes, 1883-5, *Sur la contrebande de guerre (Om Krigskontraband)*, 1 volume, 1888, and *Lois sur la neutralité (Neutralitetens Lagar)*, 2 volumes, 1889-91.

Volume I, page 20.—In reference to the question of neutrality the year 1780 ushered in a new era which may be regarded as the close of the reign of the *Consolato del Mare*. It was a period of transition to the new maritime law introduced by the Paris Congress of 1856. This period is characterized by the endeavors of the States at peace to put an end to the uncertainty regarding the rights and the duties of neutrals, to fill in the gaps of the regulation of these rights and duties and to form a union for the purpose of opposing the arbitrary way in which the greatest maritime Power was treating the neutral nations. It was at this time that there manifested itself that remarkable movement against the oppression of a despotic marine, a movement whose initiative was due to the alliance of the Northern Powers, but which was also strongly supported by the insurrection of the great transatlantic colonies against British domination. The American war of independence was a struggle like unto that of the Baltic countries against their common oppressor. The colonies were forced, by reason of the identity of interest and feelings, to take sides with the neutrals against England.

During the North American war of independence, discontent awakened by the exacting pretensions of the great maritime Powers, burst out at last, and the general sentiments of insecurity produced a violent reaction. The less powerful States realized that they had to form a union, and to be the better able to oppose abuses, the first condition was to reach an understanding with regard to the essential points. As a result there was formed in 1780 the famous so-called "Armed Neutrality" between Russia, Sweden and Denmark, whose object it

was not merely to determine the just and reasonable principles of neutrality and to rally round them all other governments, but to defend also by armed force any attack upon their rights.

The Russian Government which was joined in this force by the Scandinavian States, formulated the new rules. These rules were part of a declaration which on February 28, 1780, was transmitted by the St. Petersburg ministry, in the first place to the great western maritime Powers, England, France and Spain, and later to the rest. The following five points appeared therein as the future principles of neutrality:

1. Neutral vessels may freely navigate from port to port and along the coasts belonging to the belligerent States without being detained on their course;

2. Enemy merchandise is free under the neutral flag, excepting war contraband:

3. To determine what shall be regarded as war contraband, reference is made to articles 10 and 11 of the treaty concluded on June 20, 1766, between Russia and England, which treaty shall have obligatory force with regard to all the belligerents.¹

4. No port shall be regarded as blockaded so long as there is no real and effective danger in entering the same, that is to say, so long as it is not surrounded, by the Power which pretends to forbid entrance to it, by means of stationary and sufficiently nearby vessels.²

5. These principles are to serve as rules in the procedures and decisions of the Prize Tribunals.³

As may be judged from this, the declaration does not in its integrality and in clear terms establish the principles set down in the Utrecht treaty that the quality of the vessel determines the quality of the cargo. To the second proposition that "enemy merchandise is free under neutral flag" there is not joined the correlative disposition that "neutral merchandise is seizable under enemy flag." This was

¹The contraband articles specified in this treaty are almost all (excepting saltpeter, sulphur, saddles and bridles) of such a nature as fits them specially to war use. The list marks therefore a step in advance. It was furthermore agreed that when a neutral vessel was transporting such articles, such quantity of war ammunition as was deemed necessary for the needs of the vessel itself should be regarded as free and exempt from confiscation.

²This rule was a protest against fictitious blockades.

³An additional article declares that the Baltic Sea was to be regarded as closed waters within which acts of hostility were forbidden.

also the first time when the said two propositions which had hitherto been usually joined, were no longer found side by side. On the other hand, as nothing expresses the intention of separating them, it was concluded that the armed neutrality probably meant purely and simply to renew the Utrecht principle in this regard. There is no lack of good reasons in support of this interpretation. It is a fact that in the time when the armed neutrality was established, the general practice on the seas was to leave property free when under the neutral flag, with the reservation of the right to seize in the contrary case neutral property under enemy flag. But, if it had been the intention of doing away with this last mentioned right, though its presumed condition was given form of law, mere reflection would have required an explicit stipulation upon this point. Moreover, peace treaties and other remarkable conventions that have been concluded since 1780 contain anew the two propositions side by side, in exact conformity with the Utrecht rule.

The declaration was transmitted to the neutral governments with the invitation that they adhere thereto. This was done successively apart from Sweden and Denmark which belonged to the original alliance—by Holland, Prussia, Austria, Portugal, the Two Sicilies, and lastly by France, Spain and the United States of America. The contracting powers have all accepted the principles of armed neutrality with the obligation not merely to observe and respect these principles, but also to equip and maintain a fleet to uphold and defend them by acting in concert and in common.

Furthermore, within this more enlarged league, Russia and Denmark form together a more intimate union under the name of "Allies of the armed neutrality." These three Powers agreed to defend their cause in common and jointly, so that an attack directed against any one of them through some violation of the right of neutrals would bring simultaneously the other two to its defense.

As could be foreseen, England alone refused her adhesion to this act which was intended to open up a new phase in the regulation of neutrality by establishing principles that should gradually decrease the exclusive domination of the greatest maritime power. The British ministry explained its refusal on the ground of political maxims which it had hitherto constantly followed, and upon its conventions which, as regards treatment on the seas on the part of the British marine, granted to certain privileged States immunities which the other States did not

enjoy. And to these latter England would for nothing in the world concede the advantage that the neutral flag should protect enemy property.

England alone was however not capable of halting the current of ideas of a neutrality more in conformity with right, ideas upheld by many other nations and even by the new opinion which already began to appear everywhere on the horizon. The modern spirit demanded an international, a distributive and equal justice for all the States, and simplicity, frankness, and clarity in the laws. The principles proposed by the armed neutrality had no other object in view than that of substituting fixed rules in the place of the monetary arbitrariness, an objective justice in the place of the whim of the stronger, the precepts of natural law in the place of the shrewdness of an ambitious policy, and at least a relative security for peaceful navigation in the place of maritime brigandage. In the presence of these irrefutable facts, and in the face of the unity and harmony between the States favorable to this reform, the British Government, while avoiding a real adhesion thereto, was nevertheless compelled to practise a little more moderation in the application of its former rigorous usages. It protested in vague terms, especially against the maxim "the flag protects the merchandise." But it made more than one exception in its favor; it issued instructions to its cruisers enjoining them to proceed with greater prudence toward the neutrals, and to the latter it opened the commerce with the Mediterranean.

The principles of the "armed neutrality" acquired in this manner, if not an exclusive and absolute, at least a decisive, influence over the interpretation of the rights and duties of neutrals during the following period which extended up to the time of the Crimean war. Not all, of course, had been gained by the Declaration of 1780. It provided no protection for neutral property under the enemy flag and did not restrict the right of search. But it put an end to a state of incertitude, of insecurity, and of confusion which, for lack of precise laws accepted by the majority of the States, had controlled ever since the time of the *Consolato del Mare*. Every nation had followed its own special rule, according to the intention of the moment: not any rule had been established on juridical bases as a result of serious negotiations between a considerable number of governments. Though incomplete and defective, the principles of the "armed neutrality" were at least formulated in an exact manner and had been recognized and adopted by almost all the powers of Europe and of America. Faithfully they expressed

the reasons of an international conscience; the motive forces back of them were peace and justice. And lastly, they restricted the pretensions of a single Power of exercising a universal dictatorship unaccompanied by legal sanction and exclusively based upon might. The accord and harmony between the other States, their understanding officially declared and clearly expressed, their demands based upon equity and humanity presented a reassuring guarantee theretofore unknown. It is true that its application could only be of a restricted kind in view of the fact that no serious conflict arising from the divergence of views between England and the States of the League gave to the latter, during the period in question, the opportunity of setting forth the practical consequences of the Declaration. The great significance of the diplomatic act of the year 1780 is rather to be found in the fact that it constitutes a principle and sets forth the expression of a new and more enlightened spirit. Attention had been attracted to the need of a more effective general protection of the right of neutrality, and also to the powerful aid which the reformation of this right could find in the public opinion of the civilized world, because almost all the nations had shown themselves ready to defend more energetically than ever before the interests of the neutrals. After this solemn and collective declaration it was felt everywhere that soon there would rule a better legislation over the conditions in the countries not engaged in war while war was being waged elsewhere, and that the world was on the eve of a new and more liberal solution of the so important questions of the protection of the neutrals against the encroachments of the belligerents. The time of the great reformation in the matter of neutrality may therefore be regarded as having begun with the declaration of 1780, even though the reform itself was to await for some time its subsequent development, and though it had to suffer from the interruptions brought about as the result of abnormal circumstances.

One of these interruptions, the most deplorable and the most violent which threw Europe once more into a state of anarchy which one had been entitled to believe had long since disappeared, was the result of the wars of the great revolution which broke out soon afterward. The violations of the law of neutrality and the abuses of the laws of war reached then such a stage that it would hardly have been possible to maintain the modest reform which had been introduced, and even less to continue to develop the same. France and England surpassed one another in reactionary manifestoes addressed to the rest of Europe

concerning the situation of the neutrals, and the arbitrary decrees of the belligerents reduced these to a state of almost illimited dependency. Each of the two western rivals claimed the right to close the entire continent to its adversary. The principles not only of armed neutrality, but of almost the entire law of neutrality hitherto known and accepted, were disregarded and trampled underfoot. One of the first consequences of this violent reaction was the fact that England could again apply her antiquated principles and compel the weaker States to tolerate them, as long as they were not prevented in this by the terrorism from the opposite side. The rule that the flag protects the merchandise was in fact abolished and as the neutrals could no longer act in common accord,—some being dominated by the conqueror, and others hesitating as to the decision they should take in the face of such overwhelming evidence, while still others were compelled to conclude treaties with England in order to be able to resist the threats of France,—the bond which had held together the members of the league of 1780 was broken, and the union which had made for the unity and the success of other reformatory labors was sundered. They deserted, one after the other, or they avoided coming to a decision, at all events, they did not endeavor to realize their promise to “defend the right of the neutrals by armed force.”

Even at the last moment, when war broke out between revolutionary France and the Allied Powers, the Scandinavian States tried to strengthen the bonds by uniting on the basis of the compact of 1780. But Russia failed in this instance for she felt compelled to accede to the coalition of which England was the soul. And in fear of dividing the forces that were to be opposed to France, the other members of the league of 1780 dared not stand apart from England. Every legal scruple was put aside in the presence of the pretended political necessity of crushing, or at least of throwing back Republican France, which was regarded as dangerous for the peace of Europe. It soon became a fashionable tactic in the policy of sea dictatorship to excuse every violation of the right of neutrals with the pretext that at any price, even at the price of justice and of equity in international relations, it was necessary to prevent the domination of the French Republic. On the other hand, the French Republic put forth analogous pretexts to checkmate Britannic preponderance through violations of the law of neutrality.

Even at the time of the national Convention, the leading powers of the coalition, especially England, had tried to force the Scandinavian States to adopt with regard to France a procedure similar to others, and to prevent their commerce with French ports. They forbade the neutrals to transport thither, not only articles of war contraband, but even articles of prime necessity, such as wheat, food and other like produce. English privateers seized the vessels which carried on the transportation of such articles to France. Fictitious blockades were declared, and vessels which did not observe them were captured. Those vessels bringing produce from the French colonies were likewise declared legitimate prize. Further than that, and independently of its nationality and cargo, England declared legitimate prize any vessel sailing to or from a French port. France, on the other hand, threatened by famine, resorted to violent reprisals. In 1793 she repudiated the principles of 1780 by reestablishing the ancient prize rules which had prevailed before the reign of Louis XV. In virtue of the decrees of the national Convention French privateers captured not only enemy property under the neutral flag, but even any vessel transporting merchandise to England manufactured by or belonging to the enemy, or necessities of life belonging to neutrals but destined for the enemy. According to a law of 1798, the neutral vessel was not to be treated according to the flag she flew but according to her cargo, and in consequence was to be captured if she transported enemy property, and thus especially any object coming from England or from the English colonies was to be regarded as enemy property.

Fortunately, these reciprocal violations of the law of neutrality lasted not longer than the burst of passions loosened by the wars of the Revolution, a proof, moreover, that the oppressed law had never ceased to enjoy a certain degree of respect within the innermost of the consciences and that these continued to uphold the fundamental principles, in spite of the abuses and of the accidental transgressions of this time in almost the whole of Europe is found in the fact that since the encroachments upon the rights of the neutrals began under the national Convention, the Allied Powers deemed it necessary to lay before the neutral states which still insisted upon their rights, such as the United States of America, and the Scandinavian States in Europe, excuses with regard to the irregularities that had been commended, by alleging "the exceptional situation" created by the events which took place in

France and which were of an essential transitory nature. England went so far as to mitigate some of her measures of violence, by incurring exceptional immunities to certain neutral states which desired to remain at peace.¹

The compact of 1780 was broken and its principles no longer observed, since Russia had become the ally of England and in consequence had been compelled to abandon the new laws, so embarrassing to a maritime supremacy. Hence, when a few years later, the Russian Government again separated from England and her allies, and recovered its freedom of action, its first thought was to reconstruct the armed neutrality. The alliance between Russia, Sweden and Denmark was therefore renewed in December 16, 1800, in the name of "second armed neutrality"; and Prussia adhered to it. They returned to the principles of 1780. These principles were not merely reestablished but considerably extended and increased in a liberal and equitable sense. To the five points of the first armed neutrality, the following two were added:

1. A neutral vessel is not guilty of violating the blockade until it has been warned by a war-ship or by a corsair of the blockading Power and it attempts nevertheless to run the blockade either by ruse or by force.

2. When neutral merchant ships are escorted by a neutral warship, they may not be searched, and the declaration of the officer in command of the convoy that there is no war contraband on board shall be deemed sufficient.

The British ministry neglected no effort to break this new bond of neutrality, or at least to annul its consequences, and it was successful. After long negotiations, it again brought about the separation of Russia from her allies; and on June 17, 1801, it concluded with the St. Petersburg ministry a convention by which the Russian Government again abandoned the essential and most important principles of the compacts of 1780 and 1800, especially the one in virtue of which the neutral flag was to protect the enemy merchandise, but England was also forced to make some concessions; so that the armed neutrality, without which these concessions could not have been obtained, has not been wholly unfruitful. Forsaken by Russia the Scandinavian States remained isolated and no longer able to maintain their resistance,

¹Instructions issued in 1793 to English cruisers forbid the latter to seize Scandinavian vessels for violations of the blockade, unless in spite of the warning given them, they had again tried to enter the blockaded region.

they felt compelled to accede to the Anglo-Russian Convention (1801-1802). Prussia alone absolutely refused her aid to these recantation principles solemnly published. But England made wide use of her triumph to induce several other States, one after another, to conclude with her special conventions on the basis of the principles of 1801, which principles, in consequence, became soon afterwards predominant. It may be said that they have been the law of a large part of Europe during the first half of our century, that is to say, in a general way for England and for those which had contracted with her, but also for other states during a certain period and as long as they did not depart therefrom, until at the time of the Crimean war, the legislation upon this matter was again enlarged. The rules of 1801 deserve therefore a mention, although secondary in importance beside those of 1780. They may be summarized in the following articles:

1. Neutral vessels may freely sail to the ports and along the coasts of the belligerent nations.

2. Merchandise on board these vessels is free excepting the so-called war contraband, and merchandise belonging to the enemy; merchandise of enemy origin but purchased and transported by a neutral must in all cases enjoy the benefits acquired by the neutral flag.

3. To remove all doubt as to the nature of articles which constitute war contraband, the contracting parties refer to the treaty of commerce concluded between them on February 21, 1797.¹

4. A port is regarded as blockaded only in case its entrance offers real danger by reason of the number of warships directed to inhibit access to it.

5. Legal action against neutral vessels seized because of founded suspicions or of evidently guilty acts must be taken without delay, and the mode of procedure of this action shall be uniform and strictly legal.

Regarding the search of convoyed vessels, the stipulations of the convention may be summed up as follows:

1. The right of searching merchant ships, owned by subjects of one of the contracting powers and sailing under the escort of a war vessel of their nation, belongs exclusively to the vessels of like rank of the belligerent State and may not be exercised by corsairs.

¹According to this treaty articles of contraband were approximately limited to those which had been specified in the previous treaty between the same parties of June 20, 1766—see above, page 21—, that is to say, few exceptions to those articles especially adapted to war uses. This point constitutes therefore a concession of the neutrals.

2. Owners of vessels intending to sail in convoy under the escort of a war vessel must, before being given their ship's papers, present their passports and their sea certificates in the form determined by the treaty to the chief of the convoy.

3. When a convoy is met by a war vessel of the belligerent parties, the latter, unless weather conditions or circumstances prevent, must hold herself beyond cannon range and send a longboat to the convoying vessel to proceed in common to the examination of the papers and certificates showing that the one is authorized to escort such or such other vessels with this or that cargo from port A to port B, and that the other really belongs to the royal (imperial) marine of the nation whose flag she flies.

4. Once the regularity of the papers is established, any legitimate suspicion must be regarded as removed. In the contrary case, and after having been properly and duly requested thereto by the belligerent, the chief of the convoy must stop long enough to permit searching the convoyed vessels.

If after examination of the documents the searcher believes that he has good reasons to detain one or several convoyed vessels, article 5 authorizes him to hand the captain and crew to the chief of the escort who, on his part, may put on board the detained vessels an officer to assist in the investigation, which must take place, without delay, in the nearest port of the belligerent, in the presence of the seized vessel. Article 6 forbids the chief of the convoy to oppose by force of arms any acts ordered by the belligerent commander. If, on the other hand, the latter abuses the power thus conferred upon him, or detains a vessel without sufficient reason, the offended owners of the vessel or cargo must be indemnified.

As appears from this summary, the 1801 Convention, which evidently sought to conciliate England's pretensions and the needs of the union of the North, deviated widely from the principles of the second armed neutrality; and England's pretensions won the day on all principal matters. According to the convention enemy property under neutral flag could again be captured. A violation of the blockade made it no longer a condition that the line be passed *through ruse or through force* after *previous warning* had been given by a vessel of the blockading Power of the state of blockade in the very place of the operation—a condition which would have guaranteed an effective blockade; nor was the *fixed stationing* of the blockading vessels prescribed. Finally, the search of convoyed merchant ships was permitted. Now, these three

points which had been the main matter of England's pretensions and because of which England had protested against the treaty of the armed neutrality, constitute so many retrograde steps in the regulation of the rights of neutrals; and they carried with them the abrogation of the essentials of the liberal principles proclaimed by the league of 1780-1800, to wit: *The inviolability of the neutral flag, the effective quality of blockades, and the abolition of the search of convoys.*

On the other hand, the convention of 1801 contained, no doubt, besides these restrictions, various other provisions favorable to neutrality. It stipulated explicitly the freedom of traffic between the open parts of a belligerent and a neutral, and removed the unjust prohibitions to any commerce with the enemy which were so frequently decreed during the wars of the Revolution. It also limited in a reasonable way the idea of war contraband. And finally, to make the blockade legal, it required a certain number of war vessels which, though the number thereof was left to the subjective appreciation of the belligerents, was nevertheless calculated to exclude purely fictitious blockades. In principle the latter were at least disapproved of.

Thanks to these rather liberal provisions, the convention might have been regarded as a slight step in advance toward the development of neutrality, *if* it had been loyally executed and scrupulously applied. It was certainly the first international act of general interest through which England modified somewhat her ancient pretensions of dictatorship without any regard whatever for the opinions of the other nations. For the first time, the British Government made important concessions to the neutrals; she bound herself by explicitly clear conventional dispositions and to a certain degree broke with her traditional system, followed by all her ministries, in avoiding precise stipulations in order to avail herself of the obscurity and ambiguity of expressions according to her purposes which varied with circumstances, and in order to be able to apply the rules in partial manner toward such or such another people, and in more considerate manner toward this or that nation. It is true that the convention was far behind the armed neutrality with regard to the protection of the right of the neutrals. Nevertheless, it offered at least the advantage, not only of constituting a compact between two adverse parties which theretofore had not been able to reach an understanding, but even of binding by definite laws the greatest maritime power which theretofore had not allowed herself to be bound by anything.

Unfortunately, this advantage of the convention was considerably reduced by the fact that, in large part, it remained a dead letter. England realized ere long that she had granted too much, while the neutrals thought that she had granted too little. Their right had indeed been sacrificed to her. Both parties were dissatisfied with the new order of things, and by all means available they sought to liberate themselves. Ere long, the opportunity to do so presented itself.

MANNING: *Commentaries on the Law of Nations.* London, 1839.

William Oke Manning. English publicist; born in 1809; died in 1878. In 1839 he published *Commentaries on the Law of Nations*. There was then no English treatise on the subject (though there were two by Americans), and Manning's book was noticeable for its historical method, its appreciation of the combination of the ethical and customary elements in international law, as well as for the exactness of its reasoning and its artistic completeness. The book at first attracted little attention, but was gradually found useful by teachers, and was cited as an authority in the courts. The new edition, issued in 1875, was revised and enlarged by Professor Sheldon Amos, with a preface by Manning.

Page 257.—The commencement of the Armed Neutrality of 1780, may be traced to a circular issued by the Russian court to different European powers, dated 28th February, 1780. This document, after setting forth the great tenderness which the Empress had herself evinced in regard to neutral commerce, and the vexations, on the other hand, which neutral commerce, especially Russian, had been subjected to during the existing war, went on to state that her Imperial Majesty felt called upon to take measures to maintain her own dignity and the welfare of her subjects; and that, to prevent future misunderstanding, she had determined to communicate the principles on which she proposed to act, which she did with the greater confidence, as these principles were based on the primitive rights of nations, were such as every nation had a right to insist on, and were such as the belligerent states

could not invalidate without violating the laws of neutrality, and without disavowing the maxims which they themselves had adopted, especially in different treaties and public engagements. The principles referred to consisted of the following provisions:

I. That neutral ships might freely trade from port to port, and upon the coasts of nations at war.

II. That the property of the subjects of belligerent powers should be free on board neutral ships, excepting goods that were contraband.

III. That with regard to contraband goods, the Empress bound herself by what was contained in the arts. X and XI of her treaty with Great Britain, extending these obligations to all belligerent powers.

IV. That to determine what characterises a blockaded port, this term shall be confined to places where there is an evident danger in entering, from the arrangements of the power which is attacking, with vessels stationary and sufficiently close.

V. That these principles shall serve for a rule in the proceedings and judgments on the legality of prizes.

To support these principles, the Empress added that she had fitted out a considerable portion of her fleet, which she, nevertheless, trusted that the interests of her subjects, or the honour of her flag, would not render it necessary to employ.¹

This Manifesto, with the second article of which we are at present alone concerned, was forwarded to different belligerent and neutral powers. In reply to this communication, France,² Spain,³ and the United Provinces,⁴ immediately expressed their concurrence in its provisions.

But Great Britain never acquiesced in the pretensions of the Russian Memorial, and the reply of our court to the Russian communication stated, that "his Majesty hath acted towards friendly and neutral powers according to their own procedure respecting Great Britain, and conformably to the clearest principles generally acknowledged as the *Laws of Nations, being the only law between powers where no treaties subsist*, and agreeably to the tenor of his different engagements with other powers, whose engagements have altered this primitive law, by mutual stipulations proportioned to the will and convenience of the

¹De Martens, *Recueil*, vol. iii, pp. 158-160.

²*Ibid.* 162.

³*Ibid.* 164.

⁴*Ibid.* 168.

contracting parties:" that precise orders had been given respecting the flag and commerce of Russia, according to the Law of Nations and the tenor of our treaty of commerce; that it was to be presumed that no irregularity would happen, but that otherwise redress would be afforded by our courts of Admiralty, judging according to the Law of Nations, "in so equitable a manner, that her Imperial Majesty shall be perfectly satisfied, and acknowledge a like spirit of justice which she herself possesses."¹

Negotiations subsequently took place between some of the Northern Powers, explanatory of the assistance that was to be afforded in case the concurrence in an association should draw down an attack upon one of the confederates.² In July, 1780, Denmark, and afterwards Sweden, forwarded circulars to the courts of London, Paris, and Madrid, stating their intention to abide by the five articles of the Russian Manifesto, which were copied *verbatim*, with the exception of the alteration of the date of the respective treaties defining contraband. In reply to these circulars France and Spain returned answers highly applauding the proceedings of the Northern courts, and stating their acquiescence in the provisions of the new arrangements.³

But Great Britain appealed to the faith of treaties, of which the conduct of Denmark and Sweden was in direct violation. In the British Note to Denmark, dated 25th July, 1780, it was stated that the Danish commerce had always been treated by us in conformity with the treaties which had subsisted between the two nations for upwards of a century (the treaty of 1670 being still in full force), that "their reciprocal rights and duties were evidently traced by these solemn engagements, which would become illusory could they be changed otherwise than by mutual consent. They subsisted at the present moment in their full force, and, equally obligatory on each of the contracting powers, they formed an inviolable law for both." Our government had always followed their stipulations, and expected the same conduct from the court of Denmark.⁴

In the same manner, in the British reply to the Note of Sweden, it was stated that the articles of our treaties with Sweden offered a direct answer to her novel pretensions. The twelfth art. of our treaty of

¹De Martens, *Recueil*, vol. iii, 160, and Annual Register for 1780, p. 115.

²For the notes between Russia and Sweden see De Martens, *Recueil*, vol. iii, pp. 170-173, and Annual Register, pp. 118-120.

³De Martens, vol. iii, pp. 175, 187.

⁴*Ibid.* 182.

1661 was cited, wherein it is expressly stated that the goods of enemies shall not be concealed on board the ships of the other confederate; and that the goods of enemies found on board the ships of either confederate shall be made prize. But the goods of the subjects of the confederate shall be restored. Treaties, it was added, can not be altered, unless by the mutual consent of the contracting parties; they are equally obligatory on both, and the King would observe and maintain them as a sacred and inviolable law.¹

Appeal to the faith of treaties had, however, no effect on the conduct of these courts. Not that the obligation of these treaties was, or could be, denied. So far from it, these treaties were expressly cited by these courts themselves; and, with what would be called impudence in private transactions, some of the articles of these treaties were appealed to as still existing, by both Sweden and Denmark, while other articles of the same treaties were flagrantly violated at the same moment. Thus Denmark, in her treaty with Russia, stated in art. III, that she would abide by her treaty with Great Britain of 1670, for her definition of contraband between herself and England;² yet, by this same treaty, provision was made to prevent the goods of enemies from being concealed on board the ships of friends. And in art. II of the treaty between Sweden and Russia, Sweden refers expressly to art. XI of her treaty of 1661, for her definition of contraband between herself and England;³ yet, by the very next article, the twelfth, it was engaged that the goods of enemies should be taken from the ships of friends. Yet it was with such a flagrant violation of right, for the sake of a transient interest, that these powers entered upon treaties, based, according to their highsounding preamble, on the dignity of the contracting sovereigns, their care for the happiness of their people, and their solicitude for the rights of mankind in general.

On the 28 June/9 July, 1780, was made the treaty between Russia and Denmark, which was the first of the series establishing the confederacy of the Armed Neutrality. By article III of this treaty, it was stated, that "their Majesties after having already insisted, in their declarations to the belligerent powers, on the general principles of natural right, of which the freedom of commerce and navigation as

¹De Martens, vol. iii, p. 188.

²*Ibid.* 191.

³*Ibid.* 200.

well as the rights of neutral nations are a direct consequence, have resolved no longer to allow them to be dependent on an arbitrary interpretation, suggested by isolated and momentary interests. With this view, they have agreed,

I. That all vessels may freely navigate from port to port, and upon the coasts of nations at war.

II. That property belonging to the subjects of states at war, shall be free on board neutral vessels, excepting merchandise of contraband.

III. That to determine what characterises a blockaded port, this term shall only be allowed to those where, from the arrangements of the power which is blockading, with vessels stationary and sufficiently near, there is an evident danger in entering.

IV. That neutral vessels can not be stopped, without just cause and evident reasons; that they shall be adjudged without delay; that the proceedings shall be always uniform, prompt, and legal; and that, in every instance, besides the reparation afforded in cases in which there has been loss, but not offence, complete satisfaction shall be given for the insult offered to the flag of their Majesties.

The treaty then went on to engage that each party should equip a fleet to support these principles, that mutual succour should be afforded, and that both parties should act in concert; that these stipulations should be regarded as permanent, and that other powers should be invited to accede to similar conventions.¹

A treaty precisely similar, and copying the above four stipulations, and the ensuing articles, *verbatim*, was made between Russia and Sweden, on the 21 July/1 August, 1780, and Sweden and Denmark exchanged declarations, each binding themselves to the Russian treaty with the other, and making the confederacy for mutual defence complete between these three Powers.²

On the 24th December, 1780, the United Provinces made, at St. Petersburg, a treaty with Russia, in which they acceded to the above treaties with the Northern courts, and issued declarations of their joining in the full extent of the new confederacy.³

Before the conclusion of this treaty, however, Great Britain had declared war, on the 20th December, against the United Provinces. By treaties existing between this country and the United Provinces, it

¹De Martens, *Recueil*, vol. iii, pp. 189-195.

²*Ibid.* 198-208.

³*Ibid.* 215-222.

had been agreed that the principle that "free ships make free goods" should exist between the two countries; and also an alliance for mutual defence existed engaging that if either party were attacked, the other party should break with the aggressor in two months from the time of requisition to do so. On France and Spain joining in the American war, such requisition was made by our ambassador, but was evaded by the United Provinces. A hostile feeling was produced by this conduct, and also by the evident favouring of the American cause by the United Provinces; and, on the 17th April, 1780 a declaration was published by our government, announcing that the succours stipulated by the treaty of 1678 never having been afforded by the States General, the provisions of the treaty of commerce of 1674 should be suspended, and the United Provinces treated, no longer in accordance with the privileges there granted, but only on the footing of other neutral nations.¹ Disputes had already taken place between the two countries regarding a squadron commanded by Paul Jones, which had been refitted in the Texel, and also respecting a fleet of merchantmen convoyed, by Count Byland, who had been fired at, upon his refusing to submit to search, and the naval materials on board his merchantmen confiscated as contraband, contrary to the provisions of the treaty of 1674. The angry feeling between the two countries was aggravated by the accession of the United Provinces to the Russian Memorial; and a crisis arose upon the capture of Mr. Laurens, formerly president of the American Congress, who was taken by a British ship, and among whose papers were found documents shewing that the United Provinces had been in friendly correspondence with the United States ever since 1778, and who had with him a sketch of a treaty of amity and commerce between the United States and the States General, which appeared to be in a train of negotiation, and which was approved by the Pensionary of Amsterdam.²

Soon after the British declaration of war, the States General made application for the assistance stipulated in the new confederacy, in case any member of the alliance should be attacked in consequence of the principles there promulgated. But Sweden, to whom the application was made, replied that the British declaration could hardly be regarded as a consequence of the States General joining the new confederacy, inasmuch as that junction was made after the British declaration of

¹Annual Register, 1780, p. 61.

²See the British Manifesto, *ibid.* p. 142.

war, the latter being dated London, the 20th December, while the Dutch treaty was dated St. Petersburg, the 24th December. But although not coming within the terms of the treaty for mutual defence, it was possible that the British declaration had been hastened in order to anticipate that contingency, although the conduct of the United Provinces in regard to the Russian Memorial was not noticed in the British Manifesto. Still, if the Northern courts declared war in consequence of our breaking with Holland, they removed all the advantages of neutrality which the confederacy was especially established to promote; while, on the other hand, if the United Provinces were left to their fate, it would seem as if the confederacy had agreed to a convention which they were afraid to carry into execution. Therefore, concluded the Swedish Note, it would be best for the Northern courts to adopt a middle course, and present in their joint names a Memorial to the British court, offering their mediation between Great Britain and the United Provinces. In this proposition Russia acquiesced.¹ But the position of the Northern powers with regard to this country, was not, at that period, the most likely to make an offer of mediation acceptable; and the Dutch, having deserted our alliance for the prospect of a more gainful union, found themselves unsupported by their new confederates, and had to buffet for themselves till the end of the war, and to see their commerce cut up, and some of their colonies taken from them, till they were included in the general peace, in 1783, with the loss of Negapatam.

To return to the acts of accession to the Armed Neutrality. On the 8th May, 1781, a treaty was made between Prussia and Russia, embodying the four articles of the new alliance, and establishing Prussia as a member of the confederacy.²

On the 10th July, 1781, a similar treaty was made between Russia and the Emperor of Germany.³

A similar treaty was made between Russia and Portugal, dated the 13th July, 1782.⁴

And on the 10th February, 1783, the King of the Two Sicilies acceded to the northern confederacy.⁵

Thus had all the principal continental powers acceded to the princi-

¹See the correspondence in De Martens, *Recueil*, vol. iii, pp. 230-244.

²De Martens, *Recueil*, vol. iii, p. 245.

³*Ibid.* 252.

⁴*Ibid.* 263.

⁵*Ibid.* 267.

ples of the Armed Neutrality, when its operations were suspended by the general peace of 1783. In whatever point of view we regard this celebrated confederacy, it is difficult to find anything respectable connected with it. Among others, the following observations suggest themselves. I. The abandonment of principle for interest marks the commencement of the Armed Neutrality; an open breach of faith being made by the two powers that first joined Russia in the association. II. The ready manner in which one party of the belligerent states acceded to the novel principles, was itself a proof that these principles were inconsistent with the duties of neutrality, as they evidently assisted one side in the contest, and injured the opposed state, which refused to acquiesce in these pretensions. The declaration of France and Spain therefore, that they approved of the northern alliance, was a disproof, not a sanction, of the justice of the confederacy; and states, with the title of an Armed *Neutrality*, undertook to interfere in the issue of a war, by measures which directly assisted one, and directly injured the other, belligerent. III. A principle which the northern confederacy undertook to establish as a fundamental right of Neutrality, was then for the first time heard of in Europe; for the second article of the statement of principles declares that "free ships shall make free goods," but does not convey the corresponding stipulation that "enemy's ships shall make enemy's goods." The latter engagement is never once referred to in any of the documents creating the Armed Neutrality. But never had there been, among Christian powers, a treaty which conveyed the former immunity without also engaging the latter privilege. One principle had invariably been conveyed in exchange for the other. But the framers of the Armed Neutrality, relying upon the imposing aspect of their union, and upon Great Britain having already to cope with several enemies, defied at once precedent and principle, and attempted to establish by force what their own subsequent conduct proved them not to have regarded as a right, and what never had been claimed as such by any government whatever. IV. The number of the states that joined in the confederacy does not in the least affect the question of the right of the principle which they sought to establish. An universal, or even general, continued acquiescence in any given state-principle, may make it probable that such a principle is based on universal law. But no combination of states can establish that as a part of the Law of Nations, which is not dependent upon natural equity, nor can they, rightfully, make the observance of any stipulation incumbent upon any but the contracting

parties. A glance at the position of the European powers, at the time of the Armed Neutrality, will destroy any belief that the principles of the confederacy must have been just because they were so generally recognized. Russia, Sweden, Denmark, and the United Provinces, had the most direct and immediate interest in the pretensions which they engaged to defend. Remaining neutral at a time when some of the greatest commercial states were at war, their shipping interest would be incalculably benefited if they could carry on trade, "not with, but for," the belligerent countries, and transport the property of the subjects of the latter exempt from the capture of the adverse party. On the other hand, France and Spain had equally a direct interest in the principles of the Armed Neutrality, because, from their naval inferiority, they were unable to carry on their commerce themselves, and were glad to commit their property to the safe custody of neutral bottoms if these secured their cargoes from capture. Thus all the principal parties to this alliance were directly interested in the claims thereby advanced. But, as a test of the sincerity of their professions, it will be as well to consider whether these same parties had adhered to these principles before this particular contingency arose, or whether they maintained them after this transient advantage had passed away? With regard to the former, it is notorious that the maritime codes of France and Spain had been of unusual severity, and that so far from sparing enemies' goods on board a neutral ship, they confiscated such neutral ship into the bargain, unless where special treaty came to the rescue of the neutral: and, again, Sweden and Denmark had treaties, which had been in constant force for more than a century, engaging the reverse of the principle of the Armed Neutrality. Thus the conduct of these powers had been in direct contradiction to the novel pretension, *before* the occurrence of this particular opportunity. And with respect to their conduct *after* it, it must be remarked—V, that some of the leading parties to the Armed Neutrality violated its provisions on the very first occasion in which they happened to be belligerents. In the war between Sweden and Russia, in 1788, Gustavus III renounced the principles of the Armed Neutrality, and Russia followed the example, although not with the same open profession.¹ And this was done only five years after one of the treaties of the Armed Neutrality, notwithstanding the permanency which was declared to be guaranteed to the new stipulations by art. IX of the treaty of 1780, affording

¹See Büsch *Völkerseerecht*, pp. 34, 36.

an obvious satire on the motives that led to the confederacy, and to the great scandal of those writers who have advocated the maxims thus attempted to be established. VI. Finally, it must be remarked, that the Armed Neutrality of 1780 was attended by no consequence to Great Britain. Our government never once acceded to the principles therein put forward, but made emphatic remonstrance against admitting such claims. No decisive issue took place between the two parties, the northern confederates having no case for their joint action against our government, and Great Britain, having already France, Spain, the United States, and the United Provinces to oppose single-handed, was not in a position to take such measures for the vindication of her maritime rights as we shall see she had recourse to on a subsequent occasion.

In most of the treaties following the restoration of peace, the principle that "free ships make free goods," and the converse, was stipulated. Before that period, however, was made the treaty between the United States and the United Provinces, in 1782, where these two stipulations are found in articles XI and XII.¹ And in the same year, 1782, was made a treaty of commerce between Denmark and Russia, where the four articles of the Armed Neutrality are embodied in article XVII.² The treaty of Versailles, between France and Great Britain, in 1783, renews the treaty of commerce of 1713, in which the two clauses are inserted,³ which is also done in article II of the treaty of the same date between Great Britain and Spain.⁴ But no such renewal of former treaties was made in our treaty with the United Provinces, in 1784.⁵ The two clauses are found in articles VII and XIV of the treaty between Sweden and the United States, in 1783.⁶ On the contrary, the treaty of the same year between Russia and the Porte, engages, article XLIII, that Russian goods on board the ship of an enemy of the Porte shall not be confiscated, nor the merchants made slaves, if they be there for peaceful purposes,—being in accordance with the old rule. This treaty was renewed by the treaty of Jassy in 1792.⁷

In the treaty between Prussia and the United States, in 1785, the

¹De Martens, *Recueil*, vol. iii, pp. 439, 441.

²*Ibid.* 474.

³*Ibid.* 521.

⁴*Ibid.* 543.

⁵*Ibid.* 560.

⁶*Ibid.* 568, 572.

⁷*Ibid.* 635, and vol. v, p. 293.

twelfth article engages a treatment similar to the second article of the Armed Neutrality, that is, it stipulates that the goods of enemies shall be free on board the ships of friends, without conveying the counter stipulation that the goods of friends shall be confiscated if found on board the ships of enemies.¹ The treaty between France and the United Provinces, in 1785, renews, by article VIII, the articles of the treaty of Utrecht, which stipulated that "free ships make free goods," and the converse.² The treaty between Austria and Russia, of the same year, renews the engagements of the Armed Neutrality, by article XII.³ The treaty of commerce between Great Britain and France, in 1786, engages that "free ships make free goods," and the converse, by articles XX and XXIX.⁴ The treaty between France and Russia, in 1787, renews the engagements of the Armed Neutrality, by article XXVII;⁵ which is also done by the treaty between Russia and the king of the Sicilies, of the same year, article XVIII;⁶ and, again, by the treaty between Russia and Portugal, also of 1787, article XXII.⁷ In a treaty, of the same year, between the United States and Morocco, it was agreed, article III, that enemies' goods should be free on board neutral vessels; and also, that neutral goods should be free on board an enemy's vessel. And the same stipulation is made by the treaty between the United States and Tripoli, in 1796, and between the United States and Tunis, in 1797.⁸ In the treaty of commerce between France and Hamburgh, in 1789, the engagements of the Armed Neutrality are stipulated by article II.⁹ In the treaty, also of 1789, between Denmark and Genoa, the engagements that "free ships make free goods," and the converse, are agreed to by articles V and IX.¹⁰

Such a collection of treaties, agreeing in the principle that the cargo shall be free, or be confiscated, according as the ship is neutral or enemy, seem to go far in establishing, not that this principle was

¹De Martens, *Recueil* vol. iv, p. 42.

²*Ibid.* 68.

³*Ibid.* 76.

⁴*Ibid.* 168, 172.

⁵*Ibid.* 210.

⁶*Ibid.* 236.

⁷*Ibid.* 327.

⁸*Ibid.* 248, and vol. vi, pp. 298, 406.

⁹*Ibid.*, vol. iv, p. 426.

¹⁰*Ibid.* 442, 443.

enforced by the law of nations independent of treaty, but that it was the general wish of maritime powers that this practice should be adopted, and that it might probably become the conventional law of Europe, among those states, and only those states, which were entering into these engagements.

But such an opinion was soon proved fallacious by the result. Not fifteen years from the date of the Armed Neutrality, the wars with France had involved almost every European state; and the principle which appeared obtaining such general prevalence was abandoned by nearly all the members of the Northern confederacy, the great leader in that alliance, Russia, being the chief instigator of the unusual severities which were adopted towards neutrals.

Page 274.—We now come to the period when, by the second Armed Neutrality, in the year 1800, an attempt was again made to force on this country the recognition of the principle that “free ships make free goods.” The second Armed Neutrality differs from the first in many important particulars: It had its origin in discussions regarding the right of searching merchants ships sailing under the protection of convoy,—which will be considered in a subsequent chapter on the right of search. The irritation produced by this discussion had been aggravated by the capture, under questionable circumstances, of two Spanish frigates by the British, who had taken possession of a Swedish ship in the port of Barcelona, during the night, and under cover of her neutral flag had surprised and taken two Spanish frigates lying under the batteries of Barcelona. These differences might, however, have been amicably terminated, but for the disappointment of the Emperor of Russia regarding the island of Malta, which he expected to have had given up to him by the British. Lord Whitworth, who had been sent to Copenhagen on a special mission regarding the Danish convoy, had concluded, on the 29th August, 1800, a convention, in which that dispute was adjusted in a friendly manner.¹ But before this could be known at St. Petersburg, the Emperor Paul had issued a declaration, dated 16/27 August, inviting the courts of Sweden, Prussia, and Denmark, to re-unite in a confederacy for an Armed Neutrality, and giving the British conduct in regard to the Danish convoy as a reason for such an alliance. On learning that the British squadron, sent to support the representations of Lord Whitworth, had passed the

¹De Martens, *Recueil*, vol. vii, p. 149.

Sound, the Emperor Paul laid an embargo on all British property in his dominions, which embargo was taken off on the convention between Great Britain and Denmark being known at St. Petersburg.¹

On the surrender of Malta to the British in September, 1800, the Emperor Paul claimed this island from our government, alleging his convention of 1798, in which, however, there was not a single clause, affording not only a reason, but even a pretext, for such a demand.² It will be remembered that Paul had become Grand Master of the Knights of Malta, a fantastic attachment to that order being one of the many points which gave color to the suspicion of his insanity. Vexation at the refusal of the British to comply with his request, induced him to resort to the first means that offered of injuring this country, and in spite of the treaty between Great Britain and Russia, of which the twelfth article expressly forbade that, in case of rupture, the goods or persons of the subjects of either country should be detained or confiscated he laid an embargo on all British property in his dominions; and a British merchantman having managed to escape from Narva, he ordered that another British vessel should be burned.³

While in this state of incipient hostility, Russia concluded with Sweden, on the 4/16 December, 1800, a treaty renewing the confederacy for an Armed Neutrality. The principles declared to be established by this treaty, article III, were as follows:

I. That any vessel may freely sail from port to port, and on the coasts of nations at war.

II. That property belonging to the subjects of belligerent Powers shall be free on board the ships of neutrals, excepting goods that are contraband.

III. That to determine what constitutes a blockaded port, this term shall only be allowed to ports where, from the arrangements of the Power which is attacking with vessels stationary and sufficiently close, there is an evident danger in entering; and that any vessel sailing towards a blockaded port shall not be regarded as contravening the present convention, unless, after having been warned of the state of the port by the commander of the blockading squadron, she shall attempt to enter, employing either force or fraud.

IV. That neutral vessels may not be detained except on just grounds

¹De Martens, *Recueil*, vol. vii, pp. 150-154.

²See the treaty, which is a treaty of subsidy, *ibid.*, vol. vi, p. 557.

³De Martens, *Recueil*, vol. vii, p. 155.

and evident facts; that they shall be adjudged without delay, that the process shall always be uniform, prompt, and legal; and that in every instance, besides an indemnity to parties who have suffered loss without having committed wrong, there shall be afforded a complete satisfaction for the insult offered to the flag of Their Majesties.

V. That the declaration of the officer commanding the ship or ships of the royal or imperial navy, accompanying a convoy of one or more merchant ships, that his convoy has not on board any goods that are contraband, shall suffice to prevent there being any visitation for search on board his ship or the ships of his convoy.

By subsequent articles mutual assistance is promised in case of attack.¹

Articles to the same effect were engaged by a treaty, of the same date, between Russia and Denmark,² and, two days later, by a treaty between Russia and Prussia.³

An account of subsequent proceedings regarding this confederacy is given in the present treatise, in the chapter on the right of Search, to which the article on Convoy seemed to make the discussion most properly belong. It will be only necessary here to recapitulate that, the above-named States having joined themselves to a Power, *after* it had placed itself in a situation of equivocal amity with this country, an embargo was laid upon Danish and Swedish, as well as Russian property, in British ports. Subsequently the battle of Copenhagen took place, the Emperor Paul was assassinated, and the Emperor Alexander, immediately on his accession, made a treaty, which adjusted the dispute with Great Britain. In this treaty, dated 5/17 June, 1801, Great Britain acceded to the proposals of the Northern courts regarding convoy, and Russia agreed to the old principle, that neutral ships should not protect enemies' property. By article III, sec. 2, it was agreed that goods embarked in the ships of neutrals shall be free, excepting contraband of war *and the property of enemies*. To this treaty Denmark and Sweden afterwards acceded.⁴ Thus the principle that "free ships make free goods," had been attempted to be enforced by a confederacy which was broken by a single maritime Power, and the principle of the old rule was vindicated and reestablished. In the first Armed Neutrality, Great Britain, though she never acquiesced

¹De Martens, *Recueil*, vol. vii, p. 172.

²*Ibid.* 181.

³*Ibid.* 188.

⁴See the three treaties, De Martens, *Recueil*, vol. vii, pp. 260-281.

in the pretensions of that confederacy, and formally protested against them, yet had too many foes at the same time to make an addition to them expedient. But, in the second Armed Neutrality, we were enabled to shew that we would not permit maritime rights to be invaded by confederates united to subvert the Law of Nations for their own selfish purposes; we forced an abandonment of principles which these confederates united to defend; and Nelson's glory at Copenhagen was of the purest character, arising from valor successfully exercised in the vindication of justice.

A treaty embodying the five articles of the second Armed Neutrality, was made between Russia and Sweden on the 1/13 of March, 1801,¹ that is, before the attack on Copenhagen, and ratified at St. Petersburg on the 30 May/11 June, that is, after the signature of the above-named treaty between Russia and Great Britain. This merely shows how completely impossible it is to deduce anything like a system from the treaties of nations regarding the principle of "free ships free goods;" Russia, the leader in both the Armed Neutralities, making, in the instances before us, a treaty embodying one principle with Great Britain, while she ratified, in the very same week, a treaty with Sweden containing exactly the reverse principle.

NYS: *Le Droit International*. New edition. Brussels, 1912.

Ernest Nys. Contemporary Belgian publicist; born in 1851. Professor of international law at the University of Brussels; member of the Institute of International Law; member of the permanent court of arbitration. He is the author of many works on special branches of the subject of international law and is a frequent contributor to the periodicals. Among his numerous works, one of the most recent and systematic is *Le Droit International*, three volumes, 1904 *et seq.* The Anglo-American interpretation of international law by courts and jurists has been one of his special fields of study, and he is well known as the French translator of Westlake and Lorimer.

Volume 3, page 586.—We have recalled how, on March 17, 1693, Denmark and Sweden signed a treaty, which is perhaps the first ex-

¹*Ibid.* 329.

ample of a league to assert the rights of neutrality. In 1780 there were concluded between Russia, Denmark, and Sweden conventions likewise intended to uphold the rights of non-belligerents against the pretensions of belligerents, to which conventions a number of maritime States acceded. History calls this agreement of 1780 "the armed neutrality league."

The Declaration of Independence of the English Colonies in America is dated July 4, 1776. On February 6, 1778, Louis XVI, King of France, who had already authorized his subjects to carry munitions of war to the Americans, formally recognized the United States as an independent nation and concluded with them a real treaty of alliance in the form of a treaty of amity and commerce. On March 15, 1778, the French Ambassador informed the Court of London of the signing of the treaty. This was the signal for war. The family pact signed at Paris on August 15, 1761, between the King of France and the King of Spain, binding both the reigning sovereigns and their descendants and heirs, was destined to draw Spain into the hostilities. Charles III vainly endeavored to play the part of mediator; on June 16, 1779, he was forced to make war on Great Britain.

Spain and Great Britain put into operation the most rigorous measures with regard to neutrals on the sea. "Great Britain," says a writer, "who was the most directly interested in the argument, regarding the Americans as rebels, claimed the right to prohibit neutral Powers to have any commercial intercourse with her insurgent colonies. English Admiralty Judges—and the most formidable opponent of the rights of neutrals among them was Sir James Marriott—applied in the matter of blockade and contraband of war theories that were very elastic and fatal to neutral commerce. The privateers of Great Britain, feeling assured that they would very seldom, not to say never, be condemned to pay expenses, still less damages, became the scourge of neutral commerce."¹ In the treaty which she had concluded with the United States on February 6, 1778, France had recognized the inviolability of a neutral flag, and if she had not in her regulations of July 26, 1778, abandoned the traditional principles of her marine legislation, she had tempered them with moderation.

It has not yet been definitely ascertained whether the credit of having conceived the idea of solemnly declaring the rights of neutrals against unjust pretensions belongs to Catherine II, Empress of Russia,

¹Ch. de Boeck, *De la propriété privée ennemie sous pavillon ennemi*, p. 57.

to Charles Gravier de Vergennes, Secretary of State of Louis XVI of France, or to Andrew von Bernstorff, Minister of Charles VII of Denmark. Justice requires us to divide the honor, but it is proper to call attention to the part played by Vergennes. "The union of neutrals was his work," says a writer, "and he succeeded in formulating a masterly conception, which brought forth only beneficial results. The Secretary of State had conceived that measure even before the signing of the treaty of alliance with America. His object was to deprive the English of the mighty power which the sovereign possession of the sea assured to them. Holland, Sweden, Denmark, Russia were so situated geographically that they could enjoy, like England, the advantages of the sea; but between all these countries and England there were strong ties, either close political ties or those that were almost as irresistible, created by the fear of displeasing the harsh and vindictive Power which the downfall of France had for twenty years made mistress of Europe. M. de Vergennes was too well aware of this situation to think of attacking it from the front. His economic sense and the ideas that it gives enlightened the politician in him. . . . He perceived the new strength which the doctrine that the sea belonged to everybody and to no one, and that it was the right of neutrals to live under this law, would have in drawing these countries together."¹ The author whom we have just quoted shows how the injury to her interests finally prevailed with Catherine II over the temptations with which Great Britain was luring her Court to bring her over to its side and how Count Panin, the Empress's Chancellor, seized this occasion to attach his sovereign to the doctrine of France. "Catherine II," he writes, "addressed to the belligerent Courts of Europe the declaration, for which Panin, the Prime Minister, has, not without reason, received the praise of history, but it is proper to mention the fact that M. de Vergennes and the Government of Louis XIV had laid down the doctrine and practically dictated its terms."²

Without attempting to write the history of the armed neutrality, let us recall certain facts in connection with it.³

¹Henri Doniol, *Histoire de la participation de la France à l'établissement des Etats-Unis d'Amérique*.—Correspondance diplomatique et documents (1888), vol. 3, p. 702.

²*Ibid.*, vol. 4, p. 436.

³The Cambridge Modern History, vol. 9, 1906, chap. 2, The Armed Neutrality, by T. A. Walker and H. W. Wilson.

The merchant marine of Russia was undeveloped and the business of its northern provinces was practically in the hands of the English. In 1778 the United States endeavored to destroy this source of wealth of its enemy, and in the summer of that year there appeared in the northern seas an American privateer, which inflicted severe damage upon the vessels that frequented the port of Archangel. In the month of August the Russian Government, seeking a way to put an end to these abuses, entered into negotiations with Denmark. The problem confronting the Court of St. Petersburg was to protect the merchant marine of one of the belligerent States, and it proposed that its coasts should be patrolled by a fleet to be furnished by Denmark and Russia. Denmark, who had profited by the transportation business of France and who desired recognition of the protective maxims of neutrality, took a different view of the matter. Sweden, whose interests were identical with those of Denmark, took part in the negotiations.

No immediate result was obtained, but toward the end of 1779 new developments brought about further negotiations between the Courts of St. Petersburg and Copenhagen. A Spanish cruiser seized off Gibraltar, which was blockaded by the Spaniards, the Dutch vessel *Concordia*, which a merchant of Archangel, on half shares with a Dutch merchant, had loaded with grain, and the Prize Court at Cadiz had confirmed the prize. Russia protested. The Spanish royal order of July 10, 1777, simply required the searching of neutral vessels that passed Gibraltar and authorized the capture only of vessels which violated the blockade. The Court of St. Petersburg therefore demanded reparation for the act and the withdrawal by Spain of the ordinance it had published concerning the Straits of Gibraltar. A rescript to this effect was sent on January 19, 1780, to the Russian Envoy at Madrid, and, since four vessels belonging to a Russian merchant had just sailed from Russia, with a Russian cargo, bound for Marseilles, the Government requested that they should be protected. At that very moment St. Petersburg learned that another Russian ship, the *St. Nicholas*, had met with the same fate as the *Concordia*. It was laden with wheat for Malaga and Leghorn and had been seized and taken to Cadiz.

It was then that the Empress of Russia decided upon further diplomatic action. She determined to persuade Denmark and Sweden to back up her efforts, to invite the United Provinces and Portugal to

adhere to a common policy with them, and, finally, to draw up a declaration on the principles of the freedom of neutral commerce, which should be submitted to the belligerents.

As a matter of fact, the policy of the French Government triumphed; and the adoption of the program drawn up by Catherine II was to result in the complete isolation of Great Britain.

The Russian Government's declaration was dated February 27/March 9, 1780. It sets forth the principles which are "contained in the earliest law of peoples, the observance of which every nation has the right to demand and which the belligerent Powers can not invalidate without violating the laws of neutrality and abandoning the maxims which they have adopted in various public treaties and agreements."

According to the declaration, the principles may be reduced to the following points:

(1) That neutral ships may freely sail from port to port and along the coasts of the nations at war.

(2) That effects belonging to subjects of the Powers at war are free on board neutral vessels, with the exception of contraband.

(3) That the Russian Government, in the matter of determining what constitutes contraband, holds to the provisions of the treaty of June 20, 1766, between Russia and Great Britain, which provisions it extends to all the Powers at war. With the exception of saltpeter, sulphur, saddles and bridles, the articles of contraband enumerated in the treaty were specially designed for use in war. It was stipulated that when a neutral ship carried such articles, the quantity of munitions required for its own needs would be exempt from seizure.

(4) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power has stationed its war-ships sufficiently near to make access thereto clearly dangerous.

(5) That these principles shall constitute the rule in proceedings and judgments as to the legality of prizes.

This declaration was communicated on February 28/March 10, 1780, to the representatives of the neutral States accredited to the Court of St. Petersburg, and the envoys of Denmark, Sweden, the United Provinces, and Portugal gave the Russian Government the most friendly assurances.

To crown this declaration with success, armed neutrality had to

follow. This had been foreseen, and on February 27 instructions had been forwarded at the same time as the declaration to the Russian Ministers accredited to foreign governments. These instructions laid stress upon the necessity for a vast league, which would employ force, if there were need, to bring about respect for the principles set forth, and went on to say that it was the desire of the Empress to have these new maxims made binding upon all nations, when peace should be concluded.¹

Among the neutral nations, Denmark seemed to be the surest and steadiest support. Sweden was suspected of too friendly leanings toward France. The United Provinces, a prey to internal dissensions, were playing a waning part in European affairs; but the principles proclaimed by Catherine II were of the utmost importance to them, because the Dutch were the great ocean carriers. The attitude of the other countries was, on the whole, of little consequence.

The rescript addressed to the Russian envoy at Copenhagen instructed him to announce to the Court of Denmark that, following its example of the preceding year, the Russian Government would send in the summer a fleet to protect commerce in the northern seas, and to urge that Court to take part in this enterprise. It laid stress on the neutralization of the Baltic, pointed out the advisability of both governments forming fleets, and called attention to the fact that the principles set forth in the declaration were borrowed from Danish diplomacy. The Court of Copenhagen was invited to adhere by a formal treaty, to be drawn up in such terms as to permit other States to subscribe to it; separate articles were to settle the points which concerned only the two countries, and the Danish Government was not only to address to its ministers at Paris, London, and Madrid a note in accordance with the Russian declaration, but also to take steps with a view to obtaining the support of Sweden, Portugal, and the United Provinces. Similar instructions were given to the Russian envoy at Stockholm.

The Russian ambassadors at London and at Madrid received communications, in which the step taken by the Empress was described as "impartial and based upon the natural law." The Court of St. Petersburg considered the Americans as rebels; it had no interest in them whatever.

¹F. de Martens, *Recueil des traités et conventions conclus par la Russie avec les puissances étrangères*, vol. 2, p. 120.

The declaration was officially communicated to the envoys of the belligerents at St. Petersburg. The representative of France replied that the principles of the Empress were in accord with the intentions of his Government. The Minister of Spain confirmed the promise made by his country to satisfy the demands of Russia with regard to the injuries suffered by its subjects. The reply of the English Minister stated that lawful neutral commerce would be respected by Great Britain, and shortly after, in a note handed to the Chancellor, the representative of Great Britain gave assurance that his Government was conducting itself in accordance with the principles of the law of nations and the stipulations of treaties. The note asserted that wherever there had been a question as to the nature of the cargo Great Britain had indemnified the owners.

The cabinets of the belligerent countries likewise replied.

The Court of London invoked the law of nations, and set up against the declaration the system which it was following. The despatch was in very general terms.

France declared itself to be in accord with Russia. "In the same degree," says a writer, "in which the Russian declaration of March 9 had received but a cool welcome in England, in France the principles which it laid down were warmly applauded. When it reached Versailles, there was an outburst of joy."

The Spanish note stated that the measures of the Spanish Government, against which Russia had taken exception, were the result of Great Britain's attitude. The Court of Spain rallied to the support of the views held by the Empress, the application of which that Court itself had demanded, and it was its intention to respect them.

The negotiations with Denmark were not long in producing results. Bernstorff had at the start interposed certain objections, the safest way, in his opinion, being the conclusion of a Russo-Danish alliance. Nevertheless an agreement was reached.

On July 8 Denmark made a declaration similar to the Russian declaration, and on July 9, 1780, there was signed at Copenhagen a maritime convention for the maintenance of the principles proclaimed in the double declaration. The two States agreed to equip a certain number of war-ships, which were to act in concert, in case of need, for the protection of the commerce of the contracting parties. It was

¹P. Fauchille, *La diplomatie française et le lique des neutres de 1780 (1776-1783)*, 1893, p. 375.

decided that, if either or both of the signatories were disturbed or molested as a result of the convention, the two Governments should make common cause. Separate articles proclaimed the neutrality of the Baltic and the desire of restoring peace between the belligerents. It was stipulated that an effort should be made to the end that the system of neutrality might serve as the basis for a universal code, in which should be laid down the rules to be followed by all peoples in time of naval warfare.

On July 21 Sweden made a declaration similar to the declarations of Russia and Denmark, and on the same day a convention was signed at St. Petersburg between Russia and Sweden. It determined, in addition, the nature of contraband of war, and secret articles contained the stipulation with regard to the Baltic.

Denmark acceded to this convention as a principal party. On July 9 Sweden likewise gave its assent to the convention. The Court of Russia addressed a note to the belligerent Powers, informing them of the double accession.

On November 30, 1780, the States-General of the United Provinces sent their adhesion to the league, but the resolution had not been approved by all the Provinces and, when the convention was on the point of being signed, the country was drawn into the war against Great Britain. The United Provinces called upon the northern Powers to come to their aid, as stipulated in the armed neutrality agreement; but, as the rupture between Great Britain and the United Provinces had taken place before the accession of the United Provinces and as the result of causes foreign to the objects of the neutrality alliance, their appeal was refused.

On May 8, 1781, Prussia guaranteed the system of neutrality. Austria was, in turn, invited to adhere. Joseph II and Count von Kaunitz considered the formality as superfluous and ill-timed. As a matter of fact, they were displeased because the Empress had addressed the King of Prussia first. The Emperor's interest to maintain the Russian alliance dictated his conduct. He adhered, not by a formal treaty, but by an exchange of acts signed by the two Sovereigns, the one, an act of accession, the other, an act of acceptance. The exchange of these four documents took place on October 19, 1781.¹ Portugal acceded by the Treaty of St. Petersburg, dated July 13,

¹F. de Martens, *Recueil des Traités*, etc., vol. 2, p. 121.

1782; the Kingdom of the Two Sicilies by the Convention of February 10, 1783.

France had replied on July 27, 1780, that the Russo-Danish measure was "the greatest blessing which the present war had been able to secure to Europe." The reply of Spain is not known. As we have seen, the Congress of the United States had not received an official communication; but, on the advice of Vergennes, it gave its support to the principles proclaimed and declared that its Ministers to foreign countries should be authorized to accede, if they were asked to.¹ Great Britain made protestations of friendship, and in view of the turn affairs had taken it recommended its cruisers and privateers to act with discrimination.

The peace of Versailles of 1783 again put into effect the stipulations of the treaties of commerce signed at Utrecht in 1713. The maritime and commercial convention concluded between Great Britain and France renewed the same provisions. Taken in connection with the league of neutrals, this was a significant fact, but it should be remarked that the treaty concluded between Great Britain and the United Provinces contained no similar stipulation, so that the former of these two countries was in a position to consider the maxims favoring neutrals as exceptional in common law.

While asserting the freedom from seizure of vessels under a neutral flag, as well as their enemy cargo, with the exception of contraband of war, the armed neutrality league of 1780 and the treaties which followed it were silent as to the status of neutral goods under an enemy flag. This omission was intentional; the northern Powers feared lest they might appear to be demanding too much. However, it is none the less true that, all things considered, the league produced practical results. It had boldly brought to the fore the question of reforming international maritime law, and it is no exaggeration to regard it as the line of demarcation between two distinct epochs in the development of the law of nations.² The effect was particularly conspicuous in the field of science, where the movement favoring neutrals has become much more marked since the declaration.

¹H. Doniol, *Histoire de la participation de la France à l'établissement des Etats-Unis*, vol. 4, p. 437.

²L. Gessner, *Les droits des neutres sur mer*, 2d ed., 1875. Preface, p. vi.

VII

During the wars of the Revolution and of the Empire belligerents disregarded at will the rights of neutrals. In 1793 Great Britain, Prussia, and Russia made common cause in prohibiting the transportation of wheat and provisions to France, and France authorized its sailors to seize neutral vessels laden with food for the enemy or enemy goods.¹ Great Britain and France soon took still harsher measures. The Orders in Council and the decisions of the Admiralty judges of Great Britain went so far as to deny to neutrals the right to carry any products other than those of their own country; the laws of France and the judgments of its prize courts declared lawful prize vessels loaded wholly or partially with goods emanating from Great Britain or its possessions, no matter who was the owner of the goods, and the decree of August 29, 1798, even provided that any neutral subject found in the crew of an enemy war or merchant ship would be treated as a pirate.²

This was a blow to Denmark and Sweden especially. These two countries agreed to convoy their merchant ships. Great Britain claimed the right to search vessels sailing under convoy. It was then that Paul I of Russia, who had withdrawn from his alliances with Austria and Great Britain, issued his declaration of August 16/28, 1800, inviting Sweden, Prussia, and Denmark to conclude a convention for the reestablishment of the rights of neutrality. On December 16 two treaties were concluded at St. Petersburg, one between Russia and Sweden, and the other between Russia and Denmark. On the 18th a treaty was concluded between Russia and Prussia. Each of the three Courts acceded to the conventions of the other Courts with Russia, and the treaties of 1800 thus formed a genuine quadruple alliance.

Article 3 of the treaties set forth the "general principles of the rights of neutrals." These principles were as follows:

- (1) Every vessel may sail freely from port to port and along the coasts of the nations at war.
- (2) Effects belonging to the subjects of the Powers at war are free on board neutral vessels, with the exception of articles of contraband.

¹C. de Martens, *Nouvelles causes célèbres du droit des gens*, vol. 2, p. 179.

²Ch. de Boeck, *De la propriété privée ennemie sous pavillon ennemi*, p. 73.

(3) A port is considered to be blockaded when access thereto is clearly dangerous as the result of the measures taken by one of the belligerent Powers by placing its war-ships nearby. Neutrals are not permitted to enter the port.

(4) Neutral vessels may not be arrested except for just cause and self-evident facts. They must be adjudicated without delay and by due process of law.

(5) The declaration of the commanding officer of the war-ship or war-ships accompanying merchant vessels that his convoy has no contraband goods on board must suffice and there is no occasion to search such vessels. The captains of war-ships shall receive the strictest orders to prevent trade in contraband goods. To ensure the execution of these provisions, the two Sovereigns shall equip proportionate numbers of vessels and frigates.

Articles 11 and 12 permitted other Powers to accede to the convention and provided that the measures taken should be brought to the knowledge of the belligerents. Great Britain retaliated with war, which was of short duration, for the death of Paul I caused a sudden change in Russian policy, and on June 17, 1801, the maritime convention of St. Petersburg was concluded between England and Russia.

The rules adopted were as follows:

(1) The vessels of neutral Powers may freely enter the ports and sail along the coasts of the nations at war.

(2) This freedom does not apply to contraband of war.

(3) The flag does not cover the goods; that is to say, the freedom of the neutral vessel does not extend to the enemy property with which it is laden.

(4) Raw materials or manufactured articles of the countries at war are not regarded as enemy property when they have become the property of subjects of neutral nations.

(5) Contraband goods are those that have been so designated by previous treaties, in conformity with the stipulations of the treaty of February 22, 1797. The two Contracting Powers shall include under this head arms, projectiles, powder, saltpeter, sulphur, swordbelts, cartridge boxes, saddles and bridles. Provisions and wood for building are not considered contraband.

(6) No port shall be regarded as blockaded unless the attacking

Power shall have stationed its ships sufficiently near to render access thereto clearly dangerous.

(7) The vessels of a neutral Power may not be arrested except for just cause and self-evident acts. They are adjudicated without delay, and the procedure shall be uniform, prompt, and legal.

Denmark and Sweden were forced to accede to this convention, which laid down, among other things, the principles to be followed in the searching of merchant ships. The former of these States did so by the Treaty of Moscow of October 23, 1801; the latter by the Convention of St. Petersburg dated March 18/30, 1802.

In this way, by making concessions, which were, on the whole, rather slight, the London Cabinet secured recognition of two principles which it considered of great importance, namely, that the flag does not cover the goods and that vessels under convoy may be searched.

PHILLIMORE: *Commentaries upon International Law*. Third edition, London, 1885.

Sir Robert Phillimore, British publicist born in 1810, died in 1885. His *Authoritative Commentaries upon International Law* appeared in four volumes from 1854-1861, third edition, 1879-1885. By reason of its extent and careful treatment this work is regarded as the leading English treatise. The author is well known as a highly respected admiralty judge.

Volume III, page 335. CLXXXVI. The year 1780 opens a new chapter in the history of the intercourse of nations,—

*"Longa est injuria, longae
"Ambages, sed summa sequar fastigia rerum."*¹

In 1780, an accident brought into the field an unexpected and remarkable champion of the new doctrine—a then semi-barbarous Power of gigantic dimensions, touching at one extremity the farthest bounds of

¹*Æn.* i, 341-2.

civilization, but gradually developing at the other extremity forces and resources in the European hemisphere which made her opinion weigh heavily in the scale into which it was thrown. The vast Empire of Russia was governed at this time by Catharine II. Under her auspices arose the first of the associations known in history by the name of *the two armed neutralities*.

It is rather the province of the historian than of the jurist to trace the origin and lay bare the causes of this event. But it must be observed that the memoir of Count Goertz,¹ the diary of Lord Malmesbury, the records of De Flassan² and of Von Dohm,³ establish, beyond the possibility of a reasonable doubt, three things respecting it. First, that it was the result of a cabinet intrigue (which meant nothing less than the welfare of nations), availing itself of an accident.⁴ Secondly, that originally the Empress had fully adopted and meant to carry into effect the principles of international law contended for by England. Thirdly, that to the last she never clearly understood what she had done, or why she had given offense to Great Britain.⁵ Count Panin was Chancellor of the Empire; Prince Potemkin the reigning favorite of the Empress. England, in her war with her colonies, France, and Spain, sought aid in an alliance with Russia. Potemkin favored, Panin opposed it. The seizure of two Russian ships by Spain at this time incensed the Empress: Potemkin availed himself of her wrath to induce her to order the equipment of a fleet, destined to cooperate with England against Spain, if redress were denied. Panin discovered both that the fleet was ordered, and its destination. He saw in these facts, however, the opportunity

¹*Mémoire sur la Neutralité armée*, p. 104.

²*Hist. Gén. et Raisonnée de la Dipl. Française*, vol. vii, p. 266.

³*Denkwürdigkeiten meiner Zeit*, vol. ii, p. 100.

⁴"L'Impératrice Marie-Thérèse, s'extasiant sur le rare bonheur de Cathérine, tint au Baron de Breteuil un discours qui confirme ce que rapporte le Baron de Goertz. 'Il n'y a pas,' lui dit-elle, à l'occasion de la neutralité armée, 'il n'y a pas jusqu'à ses vues les plus mal combinées, qui ne tournent à son profit et à sa gloire; car vous savez sans doute que la déclaration qu'elle vient de faire pour sa neutralité maritime, avait d'abord été arrêtée dans les termes les plus favorables à l'Angleterre. Cet ouvrage avait été fait par la seule influence de M. le Prince Potemkin, et à l'insu de M. le Comte de Panin; et cette déclaration, inspirée par l'Angleterre, était au moment de paraître, lorsque M. de Panin, qui en a été instruit, a trouvé moyen de la faire entièrement changer, et de la tourner absolument en votre faveur.'"—*De Flassan*, vol. vii, p. 272, note (1).

⁵*Professor Wurm* (the author of many tracts on maritime law) tells us that Catherine said to Lord Malmesbury (18th December, 1783). "Mais quel mal vous fait cette *neutralité armée*, ou plutôt, *nullité armée*?"—*Die Politik der Seemächte*, p. 314. (Hamburg, 1855.)

of crushing his rival, and he seized it with great adroitness. He applauded the determination of the Empress, but artfully suggested that an occasion now presented itself to her of appearing in the magnificent character of the lawgiver of the seas, and the protectress of neutrals, and at the same time of avenging the injury to herself. The flattery was so specious and so well applied, that the Empress placed herself in the hands of her wily and successful courtier. Panin drew up a manifesto of neutral rights, and the Empress communicated it to France, Spain, and England.

Seldom has a more important event grown from a more despicable origin. It is not, perhaps, with any unnatural reluctance, that we hear in these days that Europe acquired for the first time, towards the end of the last century, an acquaintance with the true doctrines of international justice from a quarrel between the unprincipled courtiers of a vain, profligate woman, whom the inscrutable decrees of Providence had permitted to be the absolute sovereign of a half-civilized empire.

CLXXXVII. The propositions of the new Russian International Code were as follows:¹

1. That neutral ships might freely trade from port to port, and upon the coasts of nations at war.
2. That the property of the subjects of belligerent Powers should be free on board neutral ships, excepting goods that were contraband.
3. That with regard to contraband goods, the Empress bound herself by what was contained in the Articles X and XI² of her Treaty with Great Britain, extending these obligations to all belligerent Powers.
4. That to determine what characterizes a blockaded port, this term shall be confined to places where there is an evident danger in entering, from the arrangements of the Power which is attacking, with vessels stationary and sufficiently close.
5. That these principles shall serve for a rule in the proceedings and judgments on the legality of prizes.

CLXXXVIII. France, Spain, Holland, Denmark, Sweden, the two latter in direct violation of the faith of treaties, gave in their adherence

¹De Martens, *Recueil*, vol. iii, p. 158. Actes relatifs à la Neutralité armée.

²"L'Article XI du Traité de 1766 désigne les seuls objets suivans comme étant de contrebande: 'Les canons, mortiers, armes à feu, pistolets, bombes, grenades, boulets, balles, fusils, pierres à feu, mèches, poudre, salpêtre, soufre, cuirasses, piques, épées, ceinturons, poches à cartouches, selles et brides, au-delà de ce qui est nécessaire pour la provision du vaisseau.'"—De Flassan, vol. vii, p. 273 (note 1).

to Russia. At a later period, Prussia and the Empire joined the league. Still later, Portugal and the Two Sicilies joined the Russian confederacy.

CLXXXIX. As to France, we have seen what was the result of her treaty *seven months* before she joined the Russian confederacy.

As to Spain, in the year 1780, *one month* before she had issued the severest ordinances against neutrals, or of vessels which carried enemies' *goods* or provisions.

To Denmark and Sweden, Great Britain replied by the faith of treaties. Yet how did the matter stand in Denmark?²²

In 1670, a solemn treaty of commerce was concluded between Great Britain and Denmark, the third articles of which contained prohibitions of contraband; but in which, however, the words, "other than the use of war," were thought too indefinite. To remove the doubt, a convention was made to put the matter out of doubt, by which contraband was substituted in the place of the other; by which contraband was included the very subjects so often disputed,—ship-rosin, sheet-copper, hemp, sails, and cordage. This convention was signed on the 4th July, 1780. On the 8th was signed that declaration of Armed Neutrality, which had long been concerting between Great Britain, Denmark, Sweden, and Russia, and in which the King of Denmark declares that nothing under contraband, except the articles specified in the article of the treaty of 1670.

CXC. To Russia, Great Britain made answer as that "His Majesty hath acted towards friendly and allied Powers according to their own procedure respecting Great Britain, conformably to the clearest principles generally acknowledged by all nations, being the only law between Powers where there is no express treaty; and agreeably to the tenor of his different engagements with Powers, whose engagements have altered this primitive stipulations proportioned to the will and convenience of the parties." She added, "that precise orders had been given to the flag and commerce of Russia, according to the tenor of our treaty of commerce; that it was to be irregularity would happen, but that otherwise redress

¹De Martens, vol. iv, p. 268. Ward, p. 163.

²Ward, p. 155, whose concise and clear statement I have taken from his text.

by our Courts of Admiralty, judging according to the laws of nations, in so equitable a manner, that Her Imperial Majesty shall be perfectly satisfied, and acknowledge a like spirit of justice which she herself possesses."¹

CXCI. But the most remarkable fact connected with the armed neutrality of 1780 remains to be stated, namely, that *every one* of the Powers composing this hallowed league for the maintenance of international justice upon the principles of the Russian edict, departed from the obligation which they had contracted as *neutrals* as soon as they became *belligerents*, and returned without shame or hesitation to the practice of the ancient law.

In the meantime it must be borne in mind that, though this Russian Convention professed to contain an exposition of the principles of universal justice, it took care to provide that its stipulations should be binding only during the present war; it held out, indeed, the prospect of future arrangements in time of peace, and Sweden was particularly anxious to propose a congress in which the question should be finally settled. We shall see what course she pursued a few years afterwards.

CXCII. The dispute between Great Britain and the Russian League was not arranged when the war was ended. But the Treaty of Versailles, 1783, between Great Britain, France, and Spain, confirmed the Treaty of Utrecht, and therefore between these contracting Powers established the principle of "free ships free goods."

The treaty between Prussia and the United States of North America, 1785, stipulates that enemies' goods shall be free on board friends' ships, but *not* that friends' goods shall be seizable on board enemies' ships.² France and Holland renewed in 1785 the articles of the Treaty of Utrecht,³ which stipulated that *free ships make free goods*, and *enemies' ships enemies' goods*. In the same year, Austria and Russia⁴ renewed the provisions of the Armed Neutrality on this subject.

In the great commercial treaty of 26th September, 1786, negotiated by Mr. Eden, under the auspices of Mr. Pitt, with France, Great Britain engaged that "free ships should make free goods, and enemies' ships enemies' goods."⁵

In the debate which took place in Parliament upon the preliminaries

¹Annual Register, 1780. p. 115.

²De Martens, vol. iv. p. 42.

³*Ibid.* 68.

⁴*Ibid.* 76.

⁵Articles XX, XXIX. Chalmers, vol. i, pp. 530-536.

of this treaty, it was objected that they contained a recognition by Great Britain of the doctrines of the armed neutrality. To this it was answered that the provisions of this treaty were only intended to apply to a case, in itself improbable, that either of the contracting parties should be engaged in a maritime war, whilst the other should remain neutral, and that these provisions were not intended to furnish a general rule to be observed towards other nations.¹

This authoritative interpretation of the treaty is remarkable, and important, and appears to have been entirely overlooked by those² who have cited the treaty as evidence that Great Britain intended to introduce the general principle of *free ships free goods* into the International Code of Maritime Law.

CXCIII. The United States of North America, the new Power which had firmly established itself before the Treaty of Versailles was made in 1783, and which carried the doctrine of international law into a new hemisphere, incorporated the two maxims, *free ships free goods* and *enemies' ships enemies' goods*, into her treaties with Holland in 1782, with Sweden in 1783, and with Prussia in 1785.³

CXCIV. The benevolent and philosophical Franklin introduced into this last-mentioned treaty various stipulations, having for their object to mitigate the necessary horrors of war, abolishing privateering, protecting fishermen and unfortified cities, and providing for the good treatment of prisoners.⁴ The interval between the two armed neutralities is still more remarkable for the appearance of two celebrated works on the rights and duties of neutrals by two Italian jurists, Galiani and Lampredi. Galiani was, as he tells us, ordered to write his book as fast as possible, to defend the conduct of the King of the Two Sicilies in adhering to the Russian League. He published his work at Naples in 1782.⁵ In 1788, Lampredi published his work at Florence.⁶ He expressed his conclusions, founded upon very learned premises, that

¹*Parliamentary History of England*, vol. xxvi, p. 563.—*Speech of Lord Lansdowne, præsertim.*

²*Edinburgh Review for July*, 1854, p. 214.

³*Elliot's (American) Diplomatic Code*, I, pp. 134–168, 334.

⁴*Wheaton's Histoire*, p. 308.

⁵*Dei Doveri dei Principi neutrali verso i Principi guerreggianti, e di questi verso i Principi neutrali*. Napoli, 4to, 1782.

⁶*Del Commercio dei Popoli neutrali in tempo di Guerra*. Firenze.

He had previously published *Juris Publici Universalis, sive Juris Naturæ et Gentium, Theoremata*. Liburni, vol. iii, 1776–8.

Mr. Wheaton considers him to be a much abler writer than Galiani. *Wheaton's Hist.* 310.

there was no comparison between the relative importance of the rights of the belligerent and of the neutral, assuming them to be in collision upon the question of enemies' goods on board neutral ships. For what, after all (he says), is the injury sustained by the neutral from the capture of his vessel laden with enemies' goods, if his vessel be restored, and he, as the treaties and usage of nations require, be paid his freight? Merely the delay and the possible loss of a return voyage. On the other hand, if the right of the belligerent be foregone, the fatal consequence may ensue that the entire commerce of the enemy may be carried on under the neutral flag, and thus escape from capture, to the great injury of the belligerent, the main object of whose maritime warfare is to destroy the commercial resources and revenues of his enemy, the sinews of his naval power.

CXCV. It has been said that *all* the members of the armed neutrality abandoned, upon the very next opportunity of their becoming *belligerents*, the creed which they had sought to enforce by arms when *neutrals*. The forward zeal of Sweden in favor of this creed has been noticed. Let us now, having careful reference to dates, look at the conduct of those States.

The armed neutrality was in 1780. The Peace of Versailles was in 1783. The next war, in which Sweden was a *belligerent*, happened in 1788: it was a war against Russia. Her first act was absolutely to renounce the principle of free ships free goods, which she had contended for so furiously as a *neutral*. "It would be too gross an affront" (Mr. Ward observes) "to her justice to suppose that she has two lines of conduct,—one as neutral, the other as belligerent: we will therefore rather suppose that she saw the errors into which the aspiring genius of Russia, or her own impulses, heightened, perhaps, by the incidental injuries inseparable from war, had betrayed her; and that she thought, as her treaties bade her think, that the principle before us could only be matter of convention."¹

Such was the conduct of *Sweden*, practically affirming that this supposed right of the neutral was inconsistent with the clear right of the belligerent. As to *Denmark*, we have seen that in the year of the armed neutrality, 1780, she signed a treaty against the principle, *free ships make free goods*, on the 4th of July, and in favor of it on the 8th. By the convention of 1794, *Denmark* and *Sweden* renewed the renunciation of the maxim, *free ships make free goods*, which they had made in their

¹Ward, pp. 164-5.

treaties, about one hundred years before. These treaties had never been abrogated, and by this convention these States declared that they claimed no advantages other than those which were clearly founded upon their respective treaties with the different Powers at war. *Denmark*, moreover, especially confirmed her ancient treaty, referring, in her instructions, to her merchants,¹ to her treaty of 1670 with England, in which it was stipulated that there should be a certificate amongst the ship's papers to prove *that the cargo belonged to a neutral Power*, and ordered her magistrates in 1793 to deliver such necessary certificates.

But what did the author of the League² itself do? Why, on the 8th of February, 1793, Russia herself declared that her treaty with France of 1786, in which the *two* principles which have been so much discussed were contained, was no longer obligatory until the restoration of order in France.³ She went much farther, however, and renewed in the same year her treaty with *England* of 1766, the stipulations of which were, that neutral commerce should be carried on "according to the principles and rules of the law of nations generally recognized."⁴

Nor did she even stop here, but on the same day entered into another treaty with Great Britain, by which the two Powers engaged to prevent neutrals "from giving, on this occasion of common concern to every civilized State, any protection whatever, directly or indirectly, in consequence of their neutrality, to the commerce or property of the French on the sea or in the ports of France."⁵

In the very same year, Great Britain concluded treaties containing articles to the same effect, with Spain,⁶ with Russia,⁷ and with Austria.⁸

France, the most important member of the Russian League, was not the last to throw overboard the doctrine for the propagation of which it was established.

On the 9th of May, 1793,⁹ a decree of the National Convention declared that enemies' goods on board neutral vessels were good prize: that the vessels were to be released and freight paid by the captors.

¹Feb. 22, 1793.

²Manning, p. 272.

³De Martens, vol. v. p. 382.

⁴*Ibid.* 432.

⁵*Ibid.* v. 440.

⁶*Ibid.* 477.

⁷*Ibid.* 485.

⁸*Ibid.* 489.

⁹*Ibid.* 382.

On the 21st of March, 1797, the Executive Directory issued a similar decree.¹

CXCVI. So much for the fruits of the first armed neutrality. The soundness of the principle, and the faith of the engagements, were wafted, with the first breath of war, to those winds which bore the fleets and privateers of the *neutral* league, now become *belligerent*, to execute not the new but the ancient maritime international law.

*"Atque idem venti vela fidemque ferunt."*²

CXCVII. The conduct of the United States of North America with respect to this subject, deserves especial notice. This nation had been the cause of that war during the course of which appeared the first armed neutrality. It was at least her apparent interest to sanction the new law. Still more was she animated to do so by her resentment towards Great Britain and by gratitude to France; but her conduct with respect to this matter has been, under the most trying circumstances, marked not only by perfect consistency, but by preference for duty and right over interest and the expediency of the moment.

The treaty of the United States with France in 1780, was founded upon the stipulations of 1778, by which this Power, as far as her own predilections and private wishes were concerned, was at all times ready to abide.

In her treaty with England of 1795,³ these predilections and wishes, which had found their legitimate issue in particular conventions, were abandoned, and their place was taken by the ancient general law. By the seventeenth article of this treaty, the United States agreed that enemies' property on board her vessels should be confiscated, the ship and the remainder of the cargo being allowed to depart without hindrance; but that, on just suspicion, the vessels themselves might be detained and carried into the nearest port for the purpose of examining and adjudicating upon them.

CXCVIII. It was of course perfectly competent to this Power to make these two different treaties with different States, and to her enduring honor, she adhered to both under circumstances of some difficulty.

¹De Martens, vol. v, 393.

²Ovid, *Ep.* vii.

³De Martens, vol. v, p. 672.

In 1798, France promulgated¹ a new doctrine to the United States, viz., that as this Power was bound to treat France as the *most favored nation*, it was also bound not to allow French property on board American ships to be seized by British cruisers, while they prevented the seizure of British property in the same situation by the French. This demand was refused, and France threatened war in consequence. It is most truly said by Mr. Ward,² that the answers of the United States to France were models of dignified and convincing argument.

"Before the treaty with Great Britain" (it is represented in one of these notes), "the treaty with France existed. It follows, then, that the rights of England being neither diminished nor increased by compact, remained perfectly in their natural state, which is to seize enemies' property wherever found; and this is the received and allowed practice of all nations, where no treaty has intervened." A *new law of nations*, it is pretended, was introduced by the armed neutrality; but who were the parties, and what was their object? "The compact was in its own nature confined, with respect to object and duration. *It did not purport to change, nor could it change permanently and universally, the rights of nations not becoming parties to it.* The desire of establishing universally the principle, that neutral bottoms shall make neutral goods, is perhaps felt by no nation on earth more strongly than by the United States. Perhaps no nation is more deeply interested in its establishment; but the wish to establish a principle is essentially different from a determination that it is already established. The interests of the United States could not fail to produce the wish; their duty forbids them to indulge it, when decided on a mere right."³

"The complaints of the French," said another note of the American Minister to his President,⁴ "had reference, amongst other things, to the abandonment by the Americans of their neutral rights, *in not maintaining the pretended principles of the modern law of nations, that free ships make free goods; and that timber and naval stores are not contraband of war.*

"The necessity, however, for the strong and express stipulations of the armed neutrality itself by all the various Powers which joined it, showed" (as the note went on to state) "that those maxims were not in themselves law, but merely the stipulations of compact; that, by the

¹Ward, p. 167.

²*Ibid.* 167.

³*Ibid.* 168, citing *Collection of Acts*, 198, etc.

⁴*Mr. Pinckney to General Washington.*

real law, belligerents had a right to seize the property of enemies on board the ships of friends; that treaties alone could oblige them to renounce it; and that America, therefore, could not be accused of partiality to Great Britain, *because she did not compel her to renounce it.*"¹

CXCIX. In the year 1795, the United States made a treaty with Spain, including a stipulation the reverse of that contained in their treaty with England in the same year. In the Spanish treaty it is stipulated, that cargoes in neutral ships shall be free, no distinction being made as to who are the proprietors of the merchandises.²

In 1799, the United States entered into a treaty with Prussia, by the 12th article of which they declared, that as experience showed that the maxim, free ships make free goods, had not been respected in any of the wars since 1785, Prussia and the United States should, in a future time of peace, either separately between themselves, or jointly with other Powers, concert measures for the future condition of neutral commerce in time of war; meanwhile these two Powers agree that their ships shall conduct themselves as favorably towards the merchant vessels of the neutrals as the course of the war then existing might permit, observing the general rules of international law.³

But in the next year, 1800, the old French doctrine of free ships free goods, enemy's ships enemy's goods, was incorporated into a treaty between France and the United States.⁴

During the war which commenced between the United States and Great Britain in 1812, the Prize Court of the former uniformly enforced the generally acknowledged rule of international law, that enemies' goods in neutral vessels are liable to capture and confiscation, except as to such Powers with whom the American Government had stipulated, by subsisting treaties, the contrary rule, that free ships should make free goods.⁵

CC. In the treaty of commerce of 1797, between Russia and England, the article which relates to neutral commerce⁶ is silent on the question, and therefore the old law remained unchanged.

In the next year (1798), Russia entered into a treaty with Portugal, in which it was stipulated, that *free ships shall make free goods*, but also that *neutral goods in an enemy's ship should be confiscated.*⁷

¹*State Papers*, 5, 281, 286.

²Article XV. De Martens, vol. vi, p. 154.

³*Ibid.* vi, 676.

⁴*Ibid.* vii, p. 103.—Articles XIV, XV.

⁵Wheaton's *Elem.*, p. 580.—Ed. Lawrence, 1855.

⁶Article X, *ibid.* 362.

⁷Article XXIV, *ibid.* 550.

CCI. The first armed neutrality¹ took its rise, as we have seen, in the ignoble rivalry of contending courtiers and the vanity of a dissolute Empress of Russia. The second armed neutrality had not a more distinguished origin; it was the offspring of a mad Emperor of the same kingdom.

The question of *convoy* is connected with the *right of search*, and the discussion of it belongs to a subsequent chapter; but it should be mentioned here, as having excited some irritation in the Danish and Swedish Courts against England; this, however, had been allayed by the mission of Lord Whitworth, the English Ambassador to Copenhagen.

At this juncture the Russian Emperor Paul claimed, without a shadow of reason,² the island of Malta, which had been recently ceded to the English. He had become Grand Master of the once celebrated order of the knights in that island, and his attachment to this imaginary distinction was supposed to be one of the subjects on which his continually increasing insanity manifested itself. The refusal of England to surrender this island exasperated Paul, and, with an open contempt of the stipulations of an existing treaty,³ he laid an embargo on all British property within his dominions, and with a semi-Asiatic notion of justice, ordered one British vessel to be burned because another had escaped from harm.⁴

The next step of Russia was characteristic; it was to renew the abandoned armed neutrality, as if for the purpose of demonstrating how little the League had ever been concerned with general international justice, and how obviously it had always been intended to injure one particular State. Sweden,⁵ Denmark,⁶ and Prussia⁷ joined the revived confederacy, which contained the old stipulations, with this important addition:—

“That the declaration of the officers who shall command the ship of war, or ships of war, of the King or Emperor, which shall be con-

¹Manning, p. 274.

²He alleged the treaty of 1798, which was a treaty of subsidy, in which no clause affords a pretext for the demand.—De Martens, vol. vi, p. 557.

³The 12th Article provided that, in the event of the breaking out of war, the goods and persons of neither country should be detained or confiscated.

⁴De Martens, vol. vii, p. 155.

⁵*Ibid.*

⁶*Ibid.* 181.

⁷*Ibid.* 188.

voying one or more merchant ships, that the convoy has no contraband goods on board, shall be sufficient; and that no search of his ship, or the other ships of the convoy, shall be permitted. And the better to insure respect to those principles, and the stipulations founded upon them, which their disinterested wishes to preserve the imprescriptible rights of neutral nations have suggested, the High Contracting Parties, to prove their sincerity and justice, will give the strictest orders to their captains, as well of their ships of war as of their merchant ships, to load no part of their ships, or secretly to have on board any articles, which, by virtue of the present Convention, may be considered as contraband; and, for the more completely carrying into execution this command, they will respectively take care to give directions to their Courts of Admiralty to publish it, whenever they shall think it necessary; and, to this end, the regulation which shall contain this prohibition, under the several penalties, shall be printed at the end of the present Act, that no one may plead ignorance."

This attempt to introduce a new positive law upon *contraband*, happily, like the rest of the treaty, abortive, does not require further discussion in this place.

By other articles of the treaty, mutual assistance is promised in case of attack.¹

CCII. The second Russian League was destined to enjoy even a shorter existence than the first. Great Britain began her war upon this new confederacy against her by an attack upon Denmark. Nelson's immortal victory at Copenhagen was followed by another event of great importance at the time, and which demonstrated in what *personal feeling* the new League had originated. There is no despotism, however unlimited, none, however absolute and unquestionable, according to the positive law or usage of the country over which it is exercised, as not to find, sooner or later, some check in the necessities and feelings of mankind. The tyranny of Domitian and Robespierre² became at last unendurable to the poor as well as the rich, and then ensued, by violent means, their death. The ferocious acts of the Emperor Paul, and the well-founded belief that they sprang, in a great measure at least, from a disordered brain, brought about at this critical period a similar result; not, however, from the combination of the humble and great, but from the aristocracy alone. Paul suddenly disappeared from the stage on which he was acting so terrible a part. He was assas-

¹De Martens, vol. vii, p. 172.

²Sed periit postquam cerdonibus esse timendus Coeperat; hoc nocuit Lamiarum caede madenti." *Juv. Sat.* iv, 153.

sinated, and, as it is generally, and certainly not without good warrant, believed, in accordance with the deliberate resolution of the notables of his Court. The act has indeed been defended as a necessary measure of self-defense, no other remedy being supplied for such an emergency by the constitution of Russia. We are only concerned in this work with the result, which was very remarkable. Alexander, the successor to Paul, immediately concluded a treaty with England, which adjusted the dispute. By this treaty, in June, 1801, certain concessions were made by England respecting *convoy*, and it was stipulated that goods embarked in neutral ships should be free, *except contraband and the property of enemies*. Thus was the old rule reestablished between Russia and England, and to this treaty both Sweden and Denmark acceded.¹

CCIII. Among the most remarkable works upon international jurisprudence which the crisis of the second armed neutrality produced, were the *Letters of Sulpicius*, by Lord Grenville, and a *Speech*, afterwards published by the same distinguished statesman, upon the treaty between England and Russia in 1801.

In the *Letters*, Lord Grenville—who had but recently resigned the office of foreign secretary, which he had filled for many years—maintained, with perfect knowledge of the subject, much erudition, great vigor of logic, and manly eloquence, the ancient doctrines of international law against those of the armed neutrality.

In the *Speech*,² he declared that dangerous concessions, with respect to the coasting and colonial trade, to contraband of war and blockade, had been made by Great Britain. These subjects remain to be considered. With respect, however, to enemy's goods on board neutral ships, Lord Grenville admitted that it was fully recognized by the second section of the third article of the Convention, which implied an abandonment of the opposite principle of *free ships free goods*, on the part of the Northern Powers.³

¹De Martens, vol. vii, pp. 260–281, contains the *three* treaties. Russia had only a *few days before* made a treaty with Sweden, embodying the articles of the Armed Neutrality, March, 1801 (De Martens, vol. vii, p. 329), so that, in one and the same week, Russia embodied the two opposite principles in her treaties with the same nation; and it has been gravely argued that the treaties constitute the international law on this subject! Manning, 278.

²The argument was sound; but as subsequent treaties upon the same subject have been contracted between England and Russia, the concessions have no present operation or effect.

³*Vide* Phillimore's *Commentaries upon International Law*, 3d edition, vol. i. in remarkable speech is referred to upon the important question of general international law being introduced into

PRADIER-FODÉRÉ: *Traité de Droit International Public Européen et Américain.* Paris, 1885-1906

P. Pradier-Fodéré. French publicist; born in 1826; died in 1904; member of the Institute of International Law. His chief work in the domain of international law is his elaborate *Traité de Droit International Public, Européen et Américain*, 1885-1906, 8 volumes.

M. Pradier-Fodéré spent a number of years in South America and became very familiar with Latin-American conditions. His work, as the title shows, considers international law both from the European and American standpoint, and is highly regarded on the continent and in Latin America.

He also published an annotated edition of Vattel, 1863, a translation of Grotius' *De jure belli ac pacis*, 1867, and *Cours de Droit Diplomatique*, 1880.

Volume 8, page 176.—Privateering cast a sinister light upon the maritime rules which preceded the peace of Ryswick (1697) and the Treaty of Utrecht (1713); the vexations to which the English corsairs subjected the navigation of neutral States, especially during the last half of the eighteenth century, along with the violent conduct of the North American ship owners during the independence war of the American colonies, led the most of the European States, upon the appeal of Russia (1780), to unite for the protection of maritime commerce, in time of war, "in order that through the common efforts of all the neutral maritime Powers, there might be established, in behalf of the mercantile navigation of the neutral Nations, a natural system founded upon justice which might serve as a rule to the centuries to come."¹ But this system never took form in a universal maritime

¹The arbitrary proceedings, injurious to the neutrals, led Russia in 1780, to establish in behalf of the navigation and of the commerce of the neutrals, a system of principles which has since been termed the system of *armed neutrality*. The belligerent Powers (at that time they were France, Spain and Great Britain) which should have refused to recognize this system, were to have been constrained by a naval force of the neutral nations. The system of armed neutrality was formally notified by Russia to the Courts of Versailles, of Madrid and of London, and the neutral Powers having been invited to join this system it was immediately adopted by Denmark, Sweden, Holland, Prussia, Austria, Portugal and the Two Sicilies which entered into special conventions with Russia in regard to this matter. The most of these Powers were not satisfied to make their accession to this system known to the belligerent Powers, but they notified the fact to each other, and several of them made answer to that notification by forwarding an act of acceptance, so that a conventional league was established between these States, a real defensive alliance, with the object of insuring the rights of the neutrals. Furthermore, the Powers of the North decided in principle that within the Baltic Sea, as a closed sea,

code, and what is more, during the various wars which followed, the principles upon which it was based have not been observed by the very Powers which had been the first to propose it. A second league, likewise brought about by Russia in 1800, yielded no greater results, received the approval of fewer States than that of 1780 and came to an end after a short time.¹

Page 906, Section 3230.—It has been justly remarked that *armed neutrality* to which reference is made so frequently, that is to say, the neutrality *protected by an armed force* organized by a neutral Power, solely with that object in view, is not a special kind of neutrality, but merely a more or less efficacious manner of protecting ordinary neutrality if the latter stands in danger of being violated by powerful belligerents. Furthermore, any neutrality must be able to defend its

hostilities should not be permitted. France and Spain looked with favor upon the system of armed neutrality, but England declared that she would continue to abide by the clearest and most generally accepted principles of the law of nations, and by the stipulations of her treaties of commerce. But in view of the energetic attitude of the neutral Powers which had manifested a firm will to defend their pretensions in common, she enjoined upon her ship owners to act less rigorously toward them. But there is no league, however closely formed, which does not end by disintegrating, and the league of armed neutrality did not escape this fate during the war of the French Revolution. Russia herself which had been its original instrumentality, abandoned it. See: *Mémoire ou Précis historique sur la neutralité armée et son origine, suivi de pièces justificatives*, by Count de Goëtz (Basle, 1801); *Nouveau mémoire ou précis historique sur l'association des Puissances neutres connue sous le nom de la neutralité armée, avec des pièces justificatives*, 1798; Castéra, *Histoire de Catherine II.* In regard to this league, its antecedents, the laborious negotiations which preceded its conclusion and the facts which led thereto, it is best to read up on these matters in the very substantial and complete work of Mr. Paul Fauchille, entitled: *French Diplomacy and the League of Neutrals of 1780* (Paris, 1893).

The wars of those troublous times brought again home to the Powers of the North the necessity to insure the rights of the neutral flag by means of defensive alliances. Hence, the *second armed neutrality* in 1800. To this effect, Russia concluded treaties with Sweden, Denmark and Prussia. The principles of the *first armed neutrality* were resanctioned by it, increased and interpreted as appeared then necessary. Yet, this new armed neutrality was not adopted by as many Powers as the first; its life was only of short duration. Six months after its conclusion, Great Britain succeeded in forming an alliance with Russia through a maritime convention to which Denmark and Sweden were compelled to accede. In 1807 Russia informed England that she regarded the maritime convention as annulled and reaffirmed the basis of the armed neutrality by pledging herself never to depart from that system. Later on, at the time of the conclusion of the Oerebro Treaty between Sweden, England and Russia (1812), neither the maritime convention nor the system of armed neutrality were reestablished. See: Klüber, *Droit des gens moderne de l'Europe*, Sections 307, 308, 309, edition of 1874, pp. 440, 441.

rights, and, in this sense, we may affirm that *neutrality must be armed*. When threatened, then without overstepping their neutrality, the neutral States may evidently increase their forces and hold them ready, so that in case of necessity they may by force of arms oppose any attempt against their position as neutrals, provided that the measures taken by them do not exceed the defensive needs of the legitimate protection of their rights. This contingency, when such measures are to be taken, presents itself especially in the case where neutral States should be exposed to find their neutrality violated by a belligerent whose territory is nearby, vicinal or contiguous. The defense of its neutrality is a national and international duty of every neutral State; it prevents wars from extending over large areas; it limits the arena of battle.¹ When neutral States observe neutrality without taking military measures to defend it in case of need, neutrality is said to be peaceful in contradistinction to *armed neutrality*; but it is an inappropriate expression, because any neutrality, even *armed neutrality*, is a *peaceful neutrality*, in view of the fact that neutrals arming solely to protect their neutrality do so only to remain at peace. The expressions *peaceful* and *armed* do not, moreover, express necessarily opposite ideas: the former refers to a moral disposition, and the second expresses a fact. It must be recognized that this inexact designation is merely another manifestation of the tendency of writers to indulge in subtle and clever language. The term *armed neutrality* has also been given to certain alliances which, because of the inefficiency of their isolated forces, various neutral States have contracted in view of a common defense, when their interests were identic, in order to compel belligerents to recognize their rights and, betimes, their pretensions. The *armed neutralities* of 1780 and of 1800 between the Powers of the North, are a very memorable example of such alliances, although, according to the observation of Kleen, they were not confined to the defense of rights or recognized; they did not institute new legislation; and they have been nothing more than an *armed neutrality* in the ordinary sense of the word.²

¹Evidently it is not necessary that the neutrals be challenged, in order to justify their military measures calculated to defend their neutrality against the enterprises of the belligerents; imminence of such a danger sufficiently justifies them to resort to these measures.

²Kleen, *Lois et usages de la neutralité*, 1898, book I, chap. 2, sec. 22, vol. i, p. 119, note 1.

TRESCOT: *The Diplomacy of the Revolution.* New York, 1852.

William Henry Trescot. American publicist and diplomat; born in 1822; died in 1898; studied law at Harvard and was admitted to the bar in 1843; assistant secretary of state in 1860; member of State Legislature of South Carolina; counsel for United States before Halifax Fishery Commission in 1877; minister to Chile and delegate to Pan American Congress in Washington. His writings include *The Diplomacy of the Revolution*, 1852, *An American View of the Eastern Question*, 1854, and *The Diplomatic History of the Administrations of Washington and Adams*, 1857.

Page 72.—The second event to which reference has been made as exciting the hopes of American statesmen, and exercising a large though indirect influence upon the relative position of the belligerents, was the formation of the Armed Neutrality of 1780.¹ Its history is important under two aspects—first, as affecting the practical combination of European nations, and second, as declaring a new system of maritime law. The treaty of 1763 had, to a great extent, separated England from a continental connexion, and in the war with her colonies she was absolutely without an ally. The treaty between France and the United States, the declaration of war by Spain, the very uncertain temper of Holland, compelled England to renew, if possible, an alliance with some of the European Powers. Sir James Harris, afterwards better known as Lord Malmesbury, was despatched to St. Petersburg to effect, if possible, a political combination. Sanguine, adroit, and bold, he hoped too soon, moved too fast, and ventured too much; and without paradox it may be said that his very ability disabled him. He found the power of the court divided between Potemkin, a rising, and Panin, a setting favorite. He secured the one, but provoked the other; and although he estimated their positions rightly, he found, to use the apt comparison of Goertz, that if Count Panin was “a star that hastened visibly to its decline, it was

¹Flassans, *Diplomatie Française*, vol. vii. Gardien's *Traité de Paix*, tome cinquième, chap. xxi. *Diaries and Correspondence of the Earl of Malmesbury. Notices Historiques sur le Système de la Neutralité Armée, et son Origine*, par M. le Comte de Goertz. *Diplom. Corresp. of the Revolution.* Hautefeuille, *Droits et Devoirs des Nations Neutres; Discours Préliminaire.* Wheaton's *History of International Law.*

still above the horizon, and those even who most desired to see it disappear, still believed that they stood in need of its light." Having obtained, through the influence of Potemkin, two private interviews with the Empress Catharine, he succeeded, after some important concessions, in persuading her to consent to an English alliance. But when he received, in reply to his home-communications, full powers to negotiate such a treaty, he discovered to his mortification that Panin, to whom the English alliance was both politically and personally distasteful, and from whom the preliminary interviews with Catharine had been carefully concealed, had succeeded in undoing his work, and as Foreign Minister was prepared with a formal refusal to negotiate.

As if to remedy his disappointment, however, news soon arrived at St. Petersburg of the seizure of two Russian vessels laden with corn and taken by the Spaniards in the Mediterranean. The indignation of Catharine, peculiarly sensitive as to her commerce, blazed out; and, supported by Potemkin, Lord Malmesbury, with great ability, used the fortunate accident to persuade her to demand from Spain peremptory satisfaction, and at the same time to fit out a fleet at Cronstadt to be sent to sea at the first opportunity. These preparations were again carefully concealed from Count Panin, and Lord Malmesbury naturally and joyfully anticipated their inevitable result—an embroilment with Spain and her belligerent allies. Panin soon discovered the extent and direction of this well-contrived manoeuvre, and defeated it by a policy at once bold and subtle. He expressed deep sympathy with the natural indignation of the Empress at this violation of her neutral rights, but suggested that instead of being an exceptional case needing correction, it proceeded from a false system of public law, against which now was the time to protest. If England agreed with Russia in condemning the seizure, the condemnation by Russia of the principle would be equally acceptable. He therefore persuaded the Empress to publish a declaration to all the belligerents that such a violation of neutral rights would not be tolerated, and to call upon all the northern and neutral Powers to make common cause in defense of the just principles of maritime law. He satisfied her that this was not only conformable to the desire of the English Ambassador, but placed her at the head of a great league for a high and worthy purpose. He further induced her to keep her communications to the foreign courts secret until they should have reached their destination. The despatches were written

and the couriers started, without any discovery by Lord Malmesbury of the nature of their missives. The Empress indeed informed him that in a day or two such communications would be made to his court as would amply satisfy their desires, and this gracious news he himself hastened to communicate. Great then was the surprise and indignation of the English Cabinet when they received from Russia a formal declaration of maritime law contradicting the whole practice of the English Government, and striking at the foundation of the system which England had always haughtily maintained, and could at this very juncture least of all afford to dispense with. Russia demanded that free ships should make free goods—that even the coasting trade of belligerents should be opened to neutrals—that contraband should be limited and blockades stringent. England received the declaration coldly. The northern Powers eagerly combined with Russia to form a league in the defense of this system, and the belligerents whom Lord Malmesbury hoped to discomfort seized their advantage. Spain made restitution, and in recognizing the justice of the new code pleaded the arbitrary violence of England as her excuse for having violated it; while France approved the magnanimous wisdom of the Empress, and readily consented to what, by the ordinances of 1778, she had already enacted in principle as the law of her own marine. Unwilling to abandon principles which she had openly avowed and always acted upon, England saw her last hope of a continental alliance destroyed by this European league. Irritated by Holland's evasion as to her treaty obligations, and the adhesion of that republic to the armed neutrality soon after, England declared war against the Dutch. The practical result of the Armed Neutrality therefore was to add one more to the open enemies of England, and to render still more impracticable any compensating alliance. In this view it was certainly to the United States an event of great importance.

Considered as a declaration of a new system of maritime law, intended to guard neutral rights and check the supreme dominion of the English navy, it is far from deserving the importance attached to it at the time. In the first place it took its rise in an accidental intrigue, and was never at any time more than a diplomatic by-play of temporary interest. It passed its short life without activity, and died of natural exhaustion; and the Empress herself judged it rightly when she told Lord Malmesbury that it should be called rather *nullité armée* than *neutralité armée*. The great maritime belligerent Powers who

acceded to it, never recognized its principles except when convenient, and it did not even reflect the practice of Russia itself. For in a despatch dated 26th May, 1780, Lord Malmesbury says of Admiral Greig, an eminent officer in the Russian service, "As soon as he read the declaration and saw the grounds on which the instructions were to be made, he collected the various sentences which had been pronounced last war in the Archipelago by the Russian tribunal instituted for that purpose, and at which he frequently presided, on neutral ships. After proving in the clearest manner that they confiscated and condemned Turkish property wherever they found it, and the only prizes they made were such property on board neutral ships, he gave in the whole to Count Czernicheff, signifying that as a faithful and affectionate servant of the Empress he thought himself obliged to set before her eyes, that if she carried her present measures into execution she would act in direct contradiction to herself."¹

In the next place the declaration, "free ships, free goods," was not the statement of a principle, but the expression of an interest—an interest as shifting as any of those movable necessities which have always regulated political combinations, never recognized in war by those very belligerents who have declaimed about it in peace. The effort to elevate it into an international law has been only a struggle to legalize one sort of selfishness at the expense of another; and such a rule can take its place only in a system which, in the emphatic language of Sir Wm. Scott, "if it is consistent, has for its real purpose an entire abolition of capture in war—that is, in other words, to change the nature of hostility as it has ever existed among mankind, and to introduce a state of things not yet seen in the world—that of a military war and a commercial peace."²

The Congress of the United States, however, fancied that they saw in the sentiment of this purely selfish coalition, indication of such a general liberality of political judgment as would respond to the spirit of their resistance. Although discouraged by the more sober wisdom and better information of the French court, they expressed in strong resolutions their approbation of the code of the neutrality, forwarded these resolutions through Mr. Adams to the various courts who had entered into the league, and finally, on December 19, 1780, despatched Mr. Francis Dana as minister to St. Petersburg. In their instruc-

¹*Malmesbury's Diaries*, etc., vol. i, p. 264.

²Judgment of the High Court of Admiralty upon the Swedish convoy, in the case of the ship *Maria*, Paulsen, master.

tions they say to him, "You will readily perceive that it must be a leading and capital point if these United States shall be formally admitted as a party to the convention of the neutral maritime Powers for maintaining the freedom of commerce. This regulation, in which the Empress is deeply interested, and from which she has derived so much glory, will open the way for your favorable reception, which we have greater reason to expect, as she has publicly invited the belligerent Powers to accede thereto."¹

One would have supposed that the maintenance of their own freedom was quite enough for the attention of Congress; and it was, to say the least, a broad interpretation of Catharine's invitation to suppose themselves included under the term belligerents. But it must be said for the statesmen of that day, that they never forgot what they intended to be; and the uniform language of their diplomacy was bold even to what their circumstances might have stigmatized as presumption. But the anxiety with which they sought to introduce themselves into the affairs of Europe was ample evidence that they did not intend their independence to be isolation. They had resolved to be one of the nations of the earth—one to whom the politics of the world were to be matter of practical interest, and they considered their commerce as the means of direct connexion. It will be now generally admitted that any participation by the United States in this coalition would have been a useless complication of their affairs, serving no national purpose and contributing to no general good. The opportunity, however, was never offered; for Mr. Dana's efforts, however able, were very useless. His presence in St. Petersburg resulted only in affording Lord Malmesbury the small triumph of preventing his public reception by Russia, even after the acknowledged independence of the United States, and enabling him to close his career of disappointment at that court by trusting that he had "suspended the appearance of the *American agent* here in public, till such time as it may take place without having any disagreeable or extraordinary effect."²

¹*Secret Journal of Congress*, vol. ii, p. 358.

²*Malmesbury's Diaries*, etc., vol. i, p. 506. Despatch to Lord Grantham, March 11, 1783.

TWISS: *The Law of Nations considered as Independent Political Communities. On the Rights and Duties of Nations in Time of War.* Oxford, 1863.

Sir Travers Twiss, British publicist; born in 1809; died in 1897. As professor at the University of Oxford, as a practicing international lawyer, the authority of Sir Travers Twiss is justly great. Among his chief works are:—*The Rights and Duties of Nations in Time of Peace*, 1861, second edition 1884, and *The Rights and Duties of Nations in Time of War*, 1863. The two works appeared in a French edition in 1887.

Volume II, page 267.—One result of the armed neutrality of 1780 was to lay the foundation of a common concert amongst the continental Powers on the subject of contraband of war, although such concert could only take effect amongst the Powers which were parties to the treaties and declarations:¹ for it was not attempted on occasion of either of the armed neutralities of 1780 or 1800 to set aside the treaty-engagements as to contraband of war, which existed between the Powers, which were parties to either Armed Neutrality, respectively and Great Britain; on the contrary, there were express stipulations that in the matter of contraband, each State should adhere to its existing engagements with other States. It is consistent therefore with the custom of contracting which prevails amongst the European Powers, that the same nation should have different conventions on the subject of contraband of war with different nations. "Hence it arises, that the catalogue of contraband has varied very much," as observed by Lord Stowell, "and sometimes in such a manner as to make it very difficult to assign the reason of the variations, owing to particular circumstances, the history of which has not accompanied the history of the decisions."²

¹The Declarations of Prussia on the subject of contraband of war will be found in Martens, vol. iii, p. 247; and that of Austria in Martens, vol. iii, p. 258.

²The *Jonge Margaretha*, 1 Ch. Robinson, p. 192.

WALKER: *The Science of International Law*. London, 1893.

Thomas Alfred Walker. English publicist and clergyman; born in 1862; fellow and lecturer of Peterhouse College, Cambridge; senior Whewell scholar in international law, 1884; examiner in constitutional history, roman law and jurisprudence in University of London; member of the International Law Association and of several other societies interested in international and social problems. Among his publications are: *The Science of International Law*, 1893; *A Manual of Public International Law*, 1895; *A History of the Law of Nations*, volume 1, 1899.

Page 303.—The armed neutrality of 1780 was an outcome of the intrigues of Count Panin working in the interests of France and Prussia upon the vanity of the Empress Catharine, who was herself well-inclined to British views.¹ Already in 1778 Sweden and Denmark had approached the Empress with formal proposals for the formation of a combined fleet for the protection of the neutral trade of the north against all attack.² It was not until early in 1780 that, chafing under the indignities to which she deemed herself to have been subjected by the submission of her neutral commerce to the belligerent right of search, she caused to be presented to the three belligerent Courts of London, Versailles and Madrid a Declaration, wherein she set out certain principles which, without departing from the strict and rigorous neutrality which she had hitherto inviolably observed, she expressed herself determined alike to adopt and effectively defend.³ She took this step, she said, with the more confidence "qu'Elle trouve consignés ces principes dans le droit primitif des peuples, que toute nation est fondée à réclamer, et que les Puissances belligérantes ne sauroient les invalider sans violer les loix de la neutralité, et sans désavouer les maximes qu'elles ont adoptées, nommément dans différens traités et engagements publics."

¹*Diaries and Correspondence of the Earl of Malmesbury*, vol. i, pp. 219 *et seq.* Sir J. Harris to Viscount Stormont, April 24/May 5, 1780; *Ibid.* i, 299. Same to Same, 15/26 May, 1780. *Ibid.* i, 307. Sir James Harris to Hugh Elliott, 7/18 Feb., 1782, *Ibid.* i, pp. 485 *et seq.*

²Mr. Harris to the Earl of Suffolk, 11/22 Dec., 1778, *Ibid.* i, pp. 219-220. Lord Hillsborough was unfortunate enough to excite the wrath of Catharine by a jesting remark that "Her Imperial Majesty's commercial navy was already the best guarded in Europe, as she had a man-of-war to each merchantman." *Diaries and Correspondence of the Earl of Malmesbury*, vol. i, p. 219.

³Declaration of Her Majesty the Empress of all the Russias to the Courts of London, Versailles and Madrid, Martens, *Recueil*, vol. ii, p. 74.

The principles proclaimed in this imposing fashion in the name of neutrality and universal justice are set forth in five articles.

1. Que les vaisseaux neutres puissent naviguer librement de port en port et sur les côtes des nations en guerre.

2. Que les effets appartenans aux sujets des dites Puissances en guerre, soient libres sur les vaisseaux neutres à l'exception des marchandises de contrebande.

3. Que l'Impératrice se tient quant à la fixation de celles-ci à ce qui est énoncé dans l'Art. X et XI de son traité de commerce avec la Grande-Bretagne, en étendant ces obligations à toutes les Puissances en guerre.

4. Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui, où il y a par la disposition de la Puissance, qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer.

5. Que ces principes servent de règle dans les procédures et les jugemens sur la légalité des prises.¹

These articles became the basis of the First Armed Neutrality.² The reception accorded to the Imperial Declaration by the various Powers of Europe, and its ultimate fate forms a sufficient comment upon its character.

Great Britain, struggling desperately with a host of foes, with the combined force of her revolted Colonies and of her ancient enemies France and Spain, could little afford to forfeit the goodwill of the

¹Martens, *Recueil*, vol. ii, p. 75. *Diaries and Correspondence of the Earl of Malmesbury*, vol. i, p. 291.

²The precise extent of the term *contraband* being in the various acts of accession set out in detail, and the fifth article of the Imperial program being further explained, the principles of the first armed neutrality were four; viz.

(1) "Que les vaisseaux neutres puissent naviguer librement de port en port et sur les côtes des nations en guerre."

(2) "Que les effets appartenans aux sujets des dites Puissances en guerre, soient libres sur les vaisseaux neutres à l'exception des marchandises de contrebande."

(3) "Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui, où il y a par la disposition de la Puissance, qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer."

(4) "Que les vaisseaux neutres ne peuvent être arrêtés que sur justes causes et faits évidens; qu'ils soient jugés sans retard; que la procédure soit toujours uniforme, prompte et légale, et que chaque fois, outre les dédommagemens, qu'on accorde à ceux qui ont fait des pertes sans avoir été en faute, il soit rendu une satisfaction complète pour l'insulte fait au pavillon."

See the Convention between Russia and Denmark, July 9, 1780; Martens, *Recueil*, vol. ii, pp. 103-107.

first Power of the North. Yet the British Government, preferring to risk the loss of an all-powerful ally rather than adopt that attitude of politic complaisance which their ambassador at St. Petersburg—the astute and able Harris¹—urgently advised,² returned a reply of simple and unyielding dignity. During the whole course of the war, said the ministers of George III, in which His Majesty was then engaged in consequence of the aggression of France and Spain, he had manifested those sentiments of justice, equity and moderation which were wont to govern all his dealings. He had regulated his conduct towards friendly and neutral Powers in accordance with theirs in his regard, conforming it to the clearest and most generally recognized principles of the law of nations—the sole standard for nations who were bound by no particular treaty—and to the tenor of his different engagements with other Powers, engagements which had varied the normal law by mutual stipulations, and that in many various ways, according to the will and convenience of the contracting parties. Firmly bound to Her Imperial Majesty by the ties of mutual amity and of common interest, he had from the very beginning of the war given strict orders for the display of respect to her flag and to the commerce of her subjects, in accordance with the law of nations, and the tenor of his engagements with her, engagements which he would fulfil with the most scrupulous precision. These orders had been renewed, and, should the least violation occur, his admiralty tribunals, guided in their decisions solely and entirely by the general law of nations and the stipulations of particular treaties, would redress the wrong in such fashion, that Her Majesty would recognize in their judgments that spirit of justice by which she was herself animated.³

A singular contrast to this calm and self-respecting language was afforded by the enthusiastic acclamations of France and Spain.

Louis XVI, moved by no other inducement in the war in which he found himself engaged than by the attachment which he felt for the

¹James Harris, afterwards first Earl of Malmesbury, a diplomatist whose eminent abilities displayed in a peculiarly successful career amply justified Mirabeau's fear of "cet audacieux et rusé Harris" and Talleyrand's opinion of him as the most able English minister of his day. *Diaries and Correspondence of James Harris, First Earl of Malmesbury*, edited by his grandson, the third Earl. Introductory Memoir, xvii.

²Harris to Viscount Stormont, 13/24 Dec., 1780; *Diaries and Correspondence of the Earl of Malmesbury*, vol. i, pp. 368-9.

³Reply of the Court of London to the Declaration of the Empress of Russia concerning neutral commerce, dated Feb. 28, 1780, and presented at the Court of London, April 1, 1780. Martens, *Recueil*, vol. iv, pp. 345-346.

principle of the liberty of the seas, could only experience a lively satisfaction in seeing the adoption of that same principle by Imperial Russia. "Ce que Sa Majesté Impériale réclame de la part des Puissances belligérantes, n'est autre chose, que les règles prescrites à la marine Française, et dont l'exécution est maintenue avec une exactitude connue et applaudie de toute l'Europe." It would be unnecessary for His Majesty to give new orders for the care of neutral navigation over and above the ordinary regulations in force, since the Empress had declared for a system which His Majesty maintained at the price of his people's blood, and had demanded those very laws which he would desire to make the basis of the maritime code of all nations.¹

The rules proposed by the Empress of Russia, declared His Catholic Majesty, then engaged in the blockade of Gibraltar, were those which had always guided his conduct, and which he as a neutral had tried by all means possible, but without effect, to induce England to adopt, and which only the conduct of that Power had compelled him as a belligerent to depart from in self-defense.²

Nor were other Powers wanting to swell the chorus of applause. Denmark³ and Sweden,⁴ who had been the first to agitate for the formation of an armed neutral league. Prussia,⁵—whose ruler was now animated by the most inveterate hostility towards England,—Austria⁶ and the Empire,⁷ the Two Sicilies⁸ and Portugal⁹ acceded to the armed neutrality. It was in vain that Great Britain appealed to the faith of treaties and to the history of the past.¹⁰ Her utmost efforts hardly

¹Reply of the Court of France to the Declaration of the Empress of Russia, April 25, 1780. Martens, *Recueil*, vol. iv, pp. 346-348.

²Reply of the Court of Spain to the Declaration of the Empress of Russia, April 18, 1780. *Ibid.* pp. 348-350.

³July 9, 1780; *Ibid.* ii, p. 103; iv, p. 361.

⁴Sept. 9, 1780; *Ibid.* ii, p. 110; iv, pp. 369, 370.

⁵May 8, 1781; *Ibid.* ii, p. 130. Sir James Harris to Viscount Stormont, 30 April/11 May, 1781; *Diaries and Correspondence of the Earl of Malmesbury*, vol. i, p. 420.

⁶1784-5; Martens, *Recueil*, vol. ii, p. 620.

⁷Oct. 9, 1781; *Ibid.* ii, p. 171.

⁸Feb. 10, 1783; *Ibid.* ii, p. 274.

⁹July 13, 1782; *Ibid.* ii, p. 208. •

¹⁰"Treaties can be changed only by the mutual accord of the contracting parties, and, so long as they subsist, they are equally obligatory in all cases alike on the one and the other." Reply of the Court of London to the Declaration of the King of Sweden. Martens, *Recueil*, vol. iv, p. 369.

sufficed to restrain the Empress from active furtherance of her principles.

The Dutch too, between whom and the English a rupture had been swiftly preparing in consequence of the refusal by Holland of the assistance to which she was bound by treaty with England, and of the intimate relations of amity and commerce entered into between the United Provinces and the revolted American colonies,¹ hastened to secure admittance into the Neutral League.² It seemed as though the whole civilized world were rising against the maritime supremacy of England. But England was not slow to accept the challenge. Four days before³ the acceptance of the accession of Holland to the armed neutrality the British had, to the astonishment of Russia and the no small rage of Frederick,⁴ declared war against the United Provinces, and the Dutch, struggling in vain to enlist the active assistance of the Neutral Powers, secured but a bare offer of mediation, and were obliged to bear the full brunt of an unsuccessful war.⁵

The principles of the armed neutrality had not been sanctified by the practice of the parties to it in days before their trading profits were bound up with the interests of the neutral flag, and were violated by those same parties when first they exchanged their neutral character for that of belligerents. So far were France and Spain from adopting before 1780 the principle "free ships, free goods" that they regularly asserted the principles of "enemy ships, enemy goods," and "enemy goods, enemy ships," principles now kept carefully in the background. Up to the very moment of the presentation of the Imperial Declaration Spain followed the stricter practice with such severity as well-nigh drove Russia in self-defence into the arms of England.⁶ Russia herself had during her recent Turkish war confiscated Turkish property wherever found, and the only prize she made was, as her Admiral honestly confessed, of such property captured under the neutral flag.⁷ And in their war of 1788 Russia and Sweden alike

¹*Diaries and Correspondence of the Earl of Malmesbury*, vol. i, pp. 341, 380. Martens, *Recueil*, vol. ii, p. 76.

²Dec. 24, 1780; Martens, *Recueil*, vol. ii, p. 117; iv, p. 379.

³Dec. 20, 1780.

⁴"Puisque les Anglais veulent la guerre avec tout le monde, ils l'auront," cried Frederick when he heard of the English declaration. Mr. Elliott to Viscount Stormont, *Diaries and Correspondence of the Earl of Malmesbury*, vol. i, p. 383.

⁵*Ibid.* i, p. 385. Martens, *Recueil*, vol. iv, pp. 389 *et seq.*

⁶*Diaries and Correspondence of the Earl of Malmesbury*, vol. i, pp. 278-279.

⁷Sir James Harris to Viscount Stormont, 15/26 May, 1780, *Diaries and Correspondence of the Earl of Malmesbury*, vol. i, p. 306.

renounced the principles which they had publicly declared for but eight short years before.¹

After the movement of 1778-80, indeed, the combined rules "free ships, free goods; enemy ships, enemy goods" advanced in favor, and were embodied in numerous treaties, France now taking the lead in their support.² But there was still no perfect consistency in the engagements of the several Powers; sometimes the principle "free ships, free goods" was adopted without the companion jingle;³ sometimes a different rule was followed by the same Power at the same period with different states, or even with the same state at different periods.⁴ In the main, however, the principle of the freedom of the neutral flag seemed well on the way to general acceptance, when a new phase was entered upon in the outbreak of the wars of the French Revolution. The passions of the combatants in that great struggle were aroused too fiercely for any improved regard of neutral rights. France in declaring good prize the goods of an enemy found under the neutral flag⁵ was the first to repudiate her recently formed engagements, and Russia herself abandoned the high moral notions of which she had been the fervent preacher, to adopt with England "the principle generally recognized and the precepts of the law of nations,"⁶ to wit, that old rule of the *Consolato del Mare* which her ally had so long and so consistently maintained. Nor were the rest of the parties to the armed neutrality slow to follow this suggestive example.⁷ The United States

¹Cf. Martens, *Recueil*, vol. vi, p. 210.

²Treaties of France and U. S. 1778, France and Mecklenburg 1779, Holland and U. S. 1782, Sweden and U. S. 1783, France and Great Britain 1786, France and U. S. 1800; Martens, *Recueil*, vol. i, p. 695; ii, pp. 41, 255, 332, 693; vii, pp. 56 and 490; Chalmers, *Treaties*, vol. i, p. 530.

³Treaties of France and Holland 1785, Prussia and U. S. 1785, France and Hamburg 1789, U. S. and Spain 1795, U. S. and Tripoli 1796, Russia and Portugal 1798; Martens, *Recueil*, vol. ii, pp. 571, 616; iii, p. 159; vi, p. 574; vii, pp. 147 and 267.

⁴Treaty of U. S. and Great Britain, 1795; Martens, *Recueil*, vol. vi, p. 368.

⁵See the Decrees of the National Convention of May 9 and July 17, 1793, and the Arrêté of the Executive Directory of March 2, 1797; Martens, *Recueil*, vol. vi, pp. 757-9 and 769.

The Law of Jan. 18, 1798, laid down the principle that "L'état d'un navire, en ce qui concerne la qualité de neutre ou d'ennemi, est déterminé par sa cargaison." All vessels carrying English goods were accordingly declared good prize. Martens, *Recueil*, vol. vi, pp. 774-5.

⁶Treaty of Great Britain and Russia 1797, Art. 10, Martens, *Recueil*, vol. vi, p. 727; see *ibid.* v, pp. 109, 115.

⁷Treaties of Great Britain and Spain, Great Britain and Prussia, Great Britain and the Empire 1793; *ibid.* v, pp. 150, 168, 170.

remained, and for obvious reasons, the only consistent supporter of the privilege of the neutral carrier.¹

But the day of "free ships, free goods" was not yet over. In the first few months of the year 1800 A. D. the Northern Powers again drew together in the second armed neutrality.² Arising immediately in the resentment of the mad Emperor Paul at the conduct of Great Britain in retaining the island of Malta in contravention of what he conceived to be his rights as Grand Master of the Knights of St. John,³ its more public occasion was the recent irritation caused in the North by the attitude of England on the subject of the protection afforded by neutral convoy.⁴

Early in the second half of the eighteenth century Sweden and Denmark had attempted to set up as a neutral right the immunity from belligerent search of merchantmen sailing under the convoy of a neutral man-of-war.⁵ The question, however, became of more pressing importance in the last decade of the century, when the number of such convoys was largely increased in consequence of the action of the combatants in the French revolutionary struggle, and more especially after the issue of the French decrees denouncing the penalty of confiscation against the neutral ship-owner who should engage in carrying English goods, and the pirate's death to the neutral seaman who should venture to sign articles in the English service.⁶ Then the irritation of the disputants rose to fever heat in consequence of a succession of exciting incidents.

In 1798 a Swedish convoy was after some slight display of force in the British Channel brought in for adjudication in the British Prize Court, and condemned by Sir William Scott on the ground of resistance.⁷

In December, 1799, occurred a more spirited affair in the straits of Gibraltar between the English squadron of observation and a Danish

¹Treaties of U. S. and Spain 1795, U. S. and Prussia 1789, U. S. and France 1800; *ibid.* vi, pp. 154 and 676; vi, p. 103.

²*Traité et autres actes relatifs à la nouvelle association maritime*; Martens, *Supplément*, vol. ii, pp. 344-475.

³Cf. Martens, *Recueil*, vol. vii, p. 156.

⁴Manning, *Law of Nations*, Book V, chap. XI.

⁵The principle was adopted in the following treaties: United States and Prussia, 1785, France and Russia, 1786-7, Two Sicilies and Russia, 1787, Portugal and Russia, 1787 and 1798, United States and France, 1800. Martens, *Recueil*, vol. ii, p. 572; iii, pp. 17, 45, 119; vii, pp. 266, 493.

⁶Arrêté of the Executive Directory of Oct. 29, 1798.

⁷*The Maria*, 1 C. Rob. 340.

convoy, the Danish commander, in pursuance of his instructions, firing on the boats of the English search party. Mr. Merry, the chargé d'affaires at Copenhagen, immediately demanded an explanation and disavowal of the action of the Danish captain.¹ Count Bernstorff, however, far from complying with the demand, sought to justify the conduct of the officer, coupling with a denial of the right of belligerents to search merchantmen under convoy an answering demand for reparation.²

The dispute was still unsettled when on July 25, 1800, the Danish and British navies again came into hostile collision, and Captain Krabbe of the *Freya*, a Danish frigate convoying six merchantmen, having refused to permit the search of his charge in the British Channel, was, after a smart action with a British squadron, brought in with the convoy to the Downs.³ The Danish Government in their turn demanded prompt satisfaction for this most public insult to their neutral national flag, and an immediate restitution of the captured vessels. But Great Britain showed no sign of a willingness to yield. Lord Whitworth was instantly despatched on a special mission to Copenhagen, but a British fleet entered the Sound to lend weight to his representations. A lively passage at arms ensued,⁴ Great Britain defending the action of her officers as grounded in the plainest principles of the law of nations, whilst Count Bernstorff treated the capture of the convoy as an altogether unwarranted invasion of neutral rights. Finally, however, the negotiators agreed on August 29, 1800, upon a convention for the temporary settlement of the contested question.⁵ But a new and more formidable disputant was already in the field. On August 16, 1800, the Emperor Paul, to whom the Danish Government had made early approaches, issued a declaration wherein, reciting the history of the recent action of the English with regard to neutral convoys, he invited Sweden, Denmark, and Prussia to concur with him in measures for the establishment in full force of the principles of the Armed Neutrality.⁶ Nor did Paul content himself with empty

¹Mr. Merry to Count Bernstorff, April 10, 1800; Martens, *Supplément*, vol. ii, p. 347.

²Count Bernstorff to Mr. Merry, April 19, 1800; Martens, *Supplément*, vol. ii, p. 350.

³Count de Wedel-Jarlsberg to Lord Grenville, July 29, 1800; *ibid.* ii, p. 353. *Memoirs and Correspondence of the Marquis Wellesley*, vol. ii, p. 116.

⁴Martens, *Supplément*, vol. ii, pp. 359 et seq.

⁵Martens, *Recueil*, vol. vii, p. 426.

⁶Martens, *Supplément*, vol. ii, p. 368.

words. Apprised of the appearance of the English squadron in the Sound, he ordered the sequestration of all English property within his dominions. The arrival of the news of the signature, on the very day (Aug. 29) of the issue of his edict, of the Anglo-Danish convention momentarily disconcerted his plans, but, a new source of irritation against England being inopportunistically supplied by the non-fulfilment of his singular Maltese dreams, he started afresh on his career of violence. An embargo was laid on British shipping in Russian ports, and, when two British vessels made their escape by force from their anchorage in the port of Narva, a third which remained was committed to the flames. Nor were other Powers wanting to excite to frenzy a brain but too palpably disordered. Spain lent fuel to the conflagration by complaining of the irregular impressment by an English squadron of a Swedish galliot for the purpose of cutting out a couple of Spanish frigates in the harbour of Barcelona,¹ and Prussia supported her in an extraordinary and altogether unjustifiable demand upon Sweden for the release of the captured vessels. It was a singular view of neutral rights which was expounded by these strange allies: Spain excluded all Swedish vessels from her ports by way of reprisal for the refusal of Sweden to be hurried into forcible measures against England,² and Prussian troops entered the ports of the neutral city of Hamburg because an Embden contraband trader captured by the English had been driven by stress of weather into the sheltering harbour of Cuxhaven.³

But of little avail with the Powers of the North were arguments merely verbal.

In December, 1800, Denmark, Sweden and Prussia united with Russia in the second armed neutrality.

The guiding principles of the new league were set out in the main in five articles, which added to the four rules of 1780 a fifth dealing with the subject of convoy.⁴

¹Ortolan, *Dipl. de la Mer*, tom. ii, liv. 3, ch. i, pp. 30-31, and *Pièces Justificatives B*.

²See the correspondence between the Spanish and Swedish Governments, Martens, *Supplément*, vol. ii, pp. 374-381.

³*Ibid.* ii, pp. 381-387.

⁴The four Powers agreed upon measures to enforce the rules:—

(1) "Que tout vaisseau peut naviguer librement de port en port, et sur les côtes des nations en guerre.

(2) "Que les effets appartenans aux sujets des dites puissances en guerre soient libres sur les vaisseaux neutres, à l'exception des marchandises de contrebande.

Denmark, taken to task by Great Britain in respect of her accession to a combination for the support of principles diametrically opposed to the spirit of the convention but just concluded, unhesitatingly avowed her adhesion to the Northern Alliance, and called upon her questioner to admit "Que l'abandon provisoire et momentané, non d'un principe dont la question est restée indécise, mais d'une mesure dont le droit n'a jamais été, ni ne scauroit jamais être contesté, ne se trouve nullement en opposition avec les principes généraux et permanens, relativement auxquels les puissances du Nord sont sur le point de rétablir un concert, qui loin de pouvoir compromettre leur neutralité, n'est destiné qu'à la raffermir."¹

But Great Britain, now more free than in 1780 to deal with the self-constituted prophets of neutral right, was in no humor to stomach either the veiled hostility of Bernstorff or the overweening insolence² of Haugwitz. A war of embargoes speedily led on to open rupture. Parker and Nelson forced the passage of the Sound, and crushed the Danish naval power in the bloody battle of Copenhagen;³ the Danish and Swedish possessions in the West Indies surrendered in quick succession to Duckworth and Trigge;⁴ and British troops occupied with-

(3) "Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui, où il y a, par la disposition de la puissance qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer et que tout bâtimens naviguant vers un port bloqué ne pourra être regardé d'avoir contrevenu à la présente Convention, que lorsqu'après avoir été averti par le Commandant du blocus de l'état du port, il tâchera d'y pénétrer en employant la force ou la ruse.

(4) "Que les vaisseaux neutres ne peuvent être arrêtés que sur de justes causes et faits évidents, qu'ils soient jugés sans retard, que la procédure soit toujours uniforme, prompte et légale, et que chaque fois, outre les dédommagemens qu'on accorde à ceux qui ont fait des pertes, sans avoir été en contre-vention, il soit rendu une satisfaction complete pour l'insulte faite au pavillon de leurs Majestés.

(5) "Que la déclaration de l'Officier, commandant le vaisseau ou les vaisseaux de la Marine Royale ou Impériale, qui accompagneront le convoi d'un ou de plusieurs bâtimens marchands, que son convoi n'a à bord aucune marchandise de contrebande, doit suffire pour qu'il n'y ait lieu à aucune visite sur son bord ni à celui des bâtimens de son convoi."

Conventions between Russia and Sweden, Russia and Denmark and Russia and Prussia (Dec., 1800), Martens, *Supplément*, vol. ii, pp. 393, 402, 409.

¹Count Bernstorff to Mr. Drummond, Dec. 31, 1800. Martens, *Supplément*, vol. ii, p. 417.

²Count Haugwitz to Lord Carysfort, Feb. 12, 1801. Martens, *Supplément*, vol. ii, pp. 431 et seq.

³April 2, 1801.

⁴Martens, *Supplément*, vol. ii, p. 466.

out a show of resistance Serampore and Tranquebar.¹ Humbled at home and stripped of all their foreign dominions, the Danes were in no condition to prolong an unequal struggle, and the cruel murder of Paul² opened a speedy way to the accommodation of differences. Early in June, 1801, a maritime convention³ was signed at St. Petersburg between the ministers of George III and the new Emperor Alexander. The treaty may be regarded as a compromise. Great Britain, confirming the definition of contraband set out in her last treaty of commerce with Russia, agreed expressly to adopt three principles of the armed neutrality which she had not hitherto contested. She admitted the right of neutrals to navigate freely between the ports and on the coasts of nations at war, she acknowledged that blockade to be binding must be effective, and she assented to the necessity for the administration by belligerents in their dealings with neutrals of speedy and uniform justice. But she vindicated against the neutral Powers the right of search of merchantmen under convoy as exercised by *men-of-war*, and established the liability to seizure by a hostile captor of goods being actually the property of the subject of a belligerent laden under the neutral flag.⁴

WESTLAKE: *International Law, Part II, War*. Second edition, Cambridge, 1913.

John Westlake. Contemporary British publicist; born 1828; Whewell professor of international law at the University of Cambridge, 1888-1908.

Page 263.—The compromise between belligerents and neutrals is, however, subject to the question whether there is anything peculiar in

¹*Memoirs and Correspondence of the Marquis Wellesley*, vol. ii, chap. v.

²*Diaries and Correspondence of the Earl of Malmesbury*, vol. iv, pp. 54-56.

³Martens, *Supplément*, vol. ii, p. 476.

⁴It is agreed by Article III:—

"Que les effets embarqués sur les vaisseaux neutres seront libres, à l'exception de la contrebande de guerre et des propriétés ennemies; et il est convenu de ne pas comprendre au nombre des dernières les marchandises du produit, du crû ou de la manufacture des pays en guerre, qui auroient été acquises par des sujets de la puissance neutre, et seroient transportées pour leur compte; lesquelles marchandises ne peuvent être exceptées en aucun cas de la franchise accordée au pavillon de la dite puissance." *Rule 2*.

the character of the investment which neutrals have accepted as equivalent to siege, and on this we meet with a long and great controversy which still exists if the Declaration of London shall not be found to have settled it. One point has always been certain, namely, that, whether the blockade be a commercial or a military one, there must be a real danger to the blockade-runner in crossing the line of the investment, independent of any danger which he may run of being caught earlier with the intention of crossing it, or later after having crossed it. A line which it is not in itself highly dangerous to try to pass can not be that of an investment, nor can it affect with technical guilt either the intention to pass it formed at a distance, or the fact of its having been passed. This is expressed as follows by the Declaration of Paris:

4. Blockades, in order to be binding, must be real,¹ that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

If "really to prevent access" were taken literally, the successful crossing the line by one blockade-runner would prove the blockade to be void, which has never been contended. The meaning therefore must be, "to make the attempt at access highly dangerous." But, this being so, a question remains as to the method by which the danger may be created. The continental Powers, including Holland herself after her relative decline in naval power, have usually maintained that a blockade is only valid in law if the danger of ingress or egress arises from the cannon either of ships, stationary or sufficiently near one another, or of works on land. This is laid down, with more or less variety of expression, in the treaty of 1742 between France and Denmark, in that of 1753 between Holland and the Two Sicilies, in the declarations and treaties of armed neutrality in 1780, in the various adhesions of other continental States to that armed neutrality or its rules, and in the declarations and treaties of armed neutrality in 1800.²

¹*Effectifs* in the original, which means "real," not "producing an effect," as effective, which is the official translation, usually means in English. So also whenever an English writer mentions an effective blockade, he must be understood to mean a real one, that is a real investment, and not to be adding any further condition to its reality.

²In several of these pieces the place to be blockaded is described as attacked, but considering the practice of the eighteenth century, it must be admitted that this arose only from habit, or at least was done without an intention to require a real attack. An exception to that interpretation is, however, furnished by the treaty of 1787 between France and Russia, in which the rule of the armed

When Russia, by a change of policy consequent on the battle of Copenhagen and the death of the Emperor Paul, abandoned the armed neutrality of 1800, her treaty of 1801 with England required for a blockade the presence only of ships stationary *or*, instead of *and*, sufficiently near to create an evident danger of entering. Yet in 1823 she assured the United States that she no longer held herself bound by that engagement.¹

WHARTON: *A Digest of the International Law of the United States.* Second edition. Washington, 1887.

Francis Wharton, American publicist; born 1820; died 1891; solicitor for the Department of State of the United States.

Volume III, page 262.—Previous to the war which grew out of the American Revolution, the respective rights of neutrals and belligerents had been settled and clearly defined by the conventional law of Europe, to which all the maritime Powers had given their sanction in the treaties concluded among themselves. The few practical infractions, in time of war, of the principles thus recognized by them, have been disavowed, upon the return of peace, by new stipulations again acknowledging the existence of the rights of neutrals as set down in the maritime code.

In addition to the recognition of these rights by the European Powers, one of the first acts of the United States, as a nation, was their unequivocal sanction of the principles upon which they are founded, as declared in their treaty of commerce of 1778 with the King of France. These principles were that free ships gave freedom to the merchandise, except contraband goods, which were clearly de-

neutrality of 1780 is reproduced with a variation requiring an attack by a number of ships proportioned to the strength of the place, and Napoleon or his advisers, may have had that treaty in their mind when drafting the Berlin decree. But that will not excuse the transparently false assertion about "the usage of all civilized nations." See above, p. 262. Again, many of the treaties, ending with that between Russia and Denmark in 1818, require the line of investment to be formed by a certain number of ships, usually two. That of 1753, mentioned in the text, requires six ships, which may lie a little outside the range of the shore batteries, but which must expose blockade-runners to danger from their cannon.

¹Lawrence's *Wharton*, edition of 1863, editor's note 235.

fined, and that neutrals might freely sail to and between enemies' ports, except such as were blockaded in the manner therein set forth. These principles having thus been established by universal consent, became the rule by which it was expected that the belligerents would be governed in the war which broke out about that time between France and Spain, on the one hand, and Great Britain, on the other. The latter Power, however, having soon betrayed a disposition to deviate from them in some of the most material points, the Governments which had preserved a neutral course in the contest became alarmed at the danger with which their maritime rights were threatened by the encroachments and naval supremacy of England, and the Empress of Russia, at their head, undertook to unite them in the defense of those rights. On the 28th February, 1780, she issued her celebrated declaration, containing the principles according to which the commanders of her naval armaments would be instructed to protect the neutral rights of her subjects. Those principles were as follows:

1st. Neutral vessels may freely sail from port to port, and on the coasts of the nations parties to the war.

2d. The goods belonging to the subjects of the said nations are, with the exception of contraband articles, free on board neutral vessels.

3d. With respect to the definition of contraband articles, the Empress adheres to the provisions of the 10th and 11th articles of her treaty of commerce with Great Britain, and extends the obligations therein contained to all the nations at war.

4th. To determine what constitutes a blockaded port, this denomination is confined to those the entrance into which is manifestly rendered dangerous in consequence of the dispositions made by the attacking Power with ships stationed and sufficiently near.

5th. These principles are to serve as a rule in proceedings and judgments with respect to the legality of prizes.

This declaration was communicated to the belligerent Governments with a request that the principles it contained should be observed by them in the prosecution of the war. From France and Spain it received the most cordial and unequivocal approbation, as being founded upon the maxims of public law which had been their rule of conduct. Great Britain, without directly approving or condemning those maxims, promised that the rights of Russia would be respected agreeably to existing treaties. The declaration was likewise communicated to the other European Powers, and the accession by treaties or solemn dec-

larations of Denmark, Sweden, Russia, Holland, Austria, Portugal, and the two Sicilies to the principles asserted by the Empress of Russia, formed the league, which, under the name of "armed neutrality," undertook to preserve inviolate the maritime rights of neutrals.

Whatever may have been the conduct of the belligerents in that war with respect to the rights of neutrals as declared by the armed neutrality, the principles asserted by the declaration of the Empress Catharine were again solemnly recognized by the treaty of peace concluded by Great Britain and France at Versailles on the 3d September, 1783. Among the several treaties thereby renewed and confirmed was that of Utrecht, in 1713, by which the same contracting parties had, nearly a century before, given the most solemn sanction to the principles of the armed neutrality, which were thus again proclaimed by the most deliberate acts both of belligerents and neutrals as forming the basis of the universal code of maritime legislation among the naval powers of the world.

Such may be said to have been the established law of nations at the period of the peace of 1783, when the United States, recognized as independent by all the Powers of the earth, took their station amongst them. These principles, to which they had given their sanction in their treaties with France in 1778, were again confirmed in those of 1782 with Sweden, and 1785 with Prussia, and continued, uncontroverted by other nations, until the wars of the French Revolution broke out and became almost general in Europe in 1793. The maxims then advanced by Great Britain in her instructions to her naval commanders and in her orders in council regulating their conduct and that of her privateers with regard to neutrals, being in direct contravention of the principles set forth in the declaration of the armed neutrality and in her own treaty stipulations, compelled the European Powers which had remained neutral in the contest to unite again for the protection of their rights. It was with this view that the Emperor Paul, of Russia, appealed to these Powers, and that, at his instance, making common cause in behalf of the general interests of nations, Russia, Sweden, Denmark, and Prussia united in a new league of armed neutrality, bound themselves by new treaties, reasserted the principles laid down in the declaration of 1780, and added thereto some new clauses extending still further the privileges of neutral commerce.

Mr. Van Buren, Sec. of State, to Mr. Randolph, June 18, 1830.
Mss. Inst., Ministers.

Page 411.—By the “armed neutrality” entered into during the American Revolutionary War by Russia, Denmark, and Sweden in 1780, “being the three northern Powers from whose dominions chiefly the other maritime nations of Europe received supplies of timber and other naval stores,” the effort was made “to strike these from the list of contraband, or by some means to exempt them from capture.” It was understood, however, at the time, that this was an exception from the law of nations. By this law “timber and other articles for the equipment of ships are contraband of war.” Hence the recital of this principle in Jay’s treaty ought to give no just cause of offense to France.

Mr. Pickering, Sec. of State, to Mr. Pinckney, Jan. 16, 1797.
Mss. Inst., Ministers.

WOOLSEY: *Introduction to the Study of International Law, designed as an aid in teaching and in historical studies* by Theodore Dwight Woolsey. Sixth edition revised and enlarged by Theodore Salisbury Woolsey. New York, 1897.

Theodore Dwight Woolsey. American publicist and educationalist; born in 1801; died in 1889; president of Yale College from 1846 to 1871; member of the Institute of International Law; author of works on Greek literature, law, religion, and social economy. He contributed largely to periodicals and wrote numerous articles on subjects bearing on international law, among others, *Recent Aspects of International Law*, 1856, and *Right of Search*, 1858, both of which appeared in the *New Englander*, a review founded by him. His most important contribution to the science of international law is his *Introduction to the study of international law, designed as an aid in teaching and in historical studies*, 1860, which has run through many editions.

Page 270.—The position of the neutral gives rise to rights, which may be defended against attempted aggressions of a belligerent by armed forces, and several neutrals may unite for this purpose. This is called an armed neutrality, of which the two leagues of the Baltic

Powers in 1780 and 1800 furnish the most noted instances. But it may be doubted whether the term neutrality can be applied to these leagues, which not only armed themselves for self-defense, but laid down principles of public law against the known maxims of one of the belligerents, which they were ready to make good by force. (Secs. 189, 209.)

Page 310.—The armed neutrality set on foot in 1780 was a plan to escape from the severe but ancient way of dealing with neutrals which Great Britain enforced, by advancing certain milder principles of international law. These were that neutral vessels had a right to sail in freedom from harbor to harbor and along the coasts of belligerents; that the property of enemies not contraband of war on neutral ships should be free; that a port is blockaded only when evident danger attends on the attempt to run into it; that by these principles the detention and condemnation of neutral ships should be determined; and that, when such vessels had been unjustly used, besides reparation for loss, satisfaction should be made to the neutral sovereign. The parties to this league engaged to equip a fleet to maintain their principle, and were to act in concert. These parties were, besides Russia, which announced the system to the Powers at war, and invited other neutrals to cooperation, Denmark, Sweden, the Dutch provinces, Prussia, Austria, Portugal, and Naples. Two of the belligerents, France and Spain, concurred, but the other, England, replied that she stood by the law of nations and her treaties. England had reason to complain of this league, because some of the parties, then at peace with her,—Sweden and Denmark,—were at the time held by treaty with her to just the contrary principle; while others had even punished neutral ships for what they now claimed to be a neutral right. The first armed neutrality did little more than announce a principle, for no collision took place between them and Great Britain; but it formed an epoch, because in no previous arrangement between Christian states had the rule, "free ships, free goods," been separated from the opposite, "unfree or hostile ships, hostile goods." In the peace of Versailles, which in 1783 terminated the war between England and France growing out of our revolution, the two Powers returned to the stipulations of the peace of Utrecht which have been mentioned above.

Page 312.—Twenty years after the first armed neutrality a second was formed, to which Russia, the Scandinavian Powers, and Prussia were parties; and which derived the pretext for its formation from differences of opinion concerning convoy (Sec. 209), as well as from alleged violations of neutral rights by English cruisers in the case of a Swedish vessel. The platform of this alliance embraced much the same principles as that of 1780, together with new claims concerning convoy. But nothing was gained by it saving some trifling concessions from Great Britain, while Russia, Denmark and Sweden ere long gave in their adherence to the English views of neutral liabilities. (Sec. 209 and Append. ii., under 1800.)

Page 361.—A search at sea is exceedingly annoying, not only because it may affect an innocent party, and may cause expensive delays, but also because those who are concerned in it are often insolent and violent. What can be expected of a master of a privateer, or of an inferior officer in the navy, urged perhaps by strong suspicion of the neutral's guilt, but that he will do his office in the most offensive and irritating manner? To prevent these annoyances, governments have sometimes arranged with one another, that the presence of a public vessel, or convoy, among a fleet of merchantmen, shall be evidence that the latter are engaged in a lawful trade. But neutrals have gone farther than this, they have claimed, without previous treaty, that a national ship convoying their trading vessels shall be a sufficient guaranty that no unlawful traffic is on foot. The beginnings of such a claim proceeded from the Dutch in the middle of the seventeenth century, but the first earnest and concerted movement on the part of neutrals for this end, was made near the end of the last century, at which time, also, the principal maritime powers, excepting Great Britain, made treaties establishing the right of convoy between themselves. From this starting point, neutrals went on to claim that this ought to be regarded as a right forming a part of the law of nations, and to employ force, when Great Britain exercised, without respect to the convoy, the right of search on the old plan. In 1798, the convoy of a fleet of Swedish merchantmen, having, in conformity with instructions, taken a British officer out of one of the vessels of commerce, the whole fleet was captured, and Sir William Scott, in the British admiralty court, decided that the act of violence subjected all

the vessels to condemnation.¹ Not long after this, in 1800, a Danish frigate in the Mediterranean, acting as a convoy, fired on the boats sent from British frigates to examine the merchant vessels under its protection. The act was repeated in July of the same year by another frigate of the same nation, then neutral but ill-affected towards England. The frigate, named the *Freya*, with six trading vessels under its care, met six British ships of war, when the refusal of a demand to search the merchantmen led to acts of hostility, which resulted in the surrender of the Danish national vessel. In consequence, however, of negotiations between the two governments, the ship was released, and it was agreed, on the part of the Danes, that the right of convoy should not be exercised, until some arrangement should be made touching this point.

These collisions were one of the reasons for the formation of the *second armed neutrality* of 1800. In that league the contracting Powers (Russia, Sweden, Denmark, and Prussia), among other stipulations, agreed that search should be prevented by a declaration of officers in charge of a convoy to the effect that the ships under his charge had no contraband goods on board.

The armed neutrality was succeeded by retaliatory embargoes, and on the 2d of April, 1801, the battle of Copenhagen prostrated the power of Denmark. Conventions were soon afterwards effected between Great Britain and the northern powers—i. e., Russia, Sweden, and Denmark, without Prussia—by which it was agreed that goods on neutral vessels, except contraband of war and enemy's property, should be free, and in which the following arrangements regarding convoy received the assent of the parties: (1) That the right of visit, exercised by belligerents on vessels of the parties to the armed neutrality, shall be confined to public vessels of war, and never committed to privateers. (2) That trading vessels of any of the contractants, under convoy, shall lodge with the commander of the convoying vessel their passports and certificates or sea-letters, drawn up according to a certain form. (3) That when such vessel of convoy and a belligerent vessel meet, they shall ordinarily be beyond the distance of cannon-shot from one another, and that the belligerent commander shall send a boat to the neutral vessel, whereupon proofs shall be exhibited both that the vessel of convoy has a right to act in that capacity, and that

¹Case of the *Maria*, 1 Robinson's Rep. 340-379.

the visiting vessel in truth belongs to the public navy. (4) This done, there shall be no visit, if the papers are according to rule. Otherwise, the neutral commander, on request of the other, shall detain the merchantmen for visits, which shall be made in the presence of officers selected from the two ships of war. (5) If the commander of the belligerent vessels finds that there is reason in any case for further search, on notice being given of this, the other commander shall order an officer to remain on board the vessel so detained, and assist in examining into the cause of the detention. Such vessel is to be taken to the nearest convenient port belonging to the belligerent, where the ulterior search shall be conducted with all possible despatch.¹

¹See Woolsey, *Introduction to the Study of International Law*, 6th ed., Append. ii, under 1800.

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